LAW ENFORCEMENT UNDERCOVER ACTIVITIES

HEARINGS

BEFORE THE

SELECT COMMITTEE TO STUDY LAW ENFORCEMENT UNDERCOVER ACTIVITIES OF COMPONENTS OF THE DEPARTMENT OF JUSTICE

UNITED STATES SENATE

NINETY-SEVENTH CONGRESS

SECOND SESSION

LAW ENFORCEMENT UNDERCOVER ACTIVITIES

JULY 20-22, JULY 27-29, AUGUST 18, SEPTEMBER 9, 14-16, 21, 28, AND 30, 1982

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SELECT COMMITTEE TO STUDY LAW ENFORCEMENT UNDERCOVER ACTIVITIES OF COMPONENTS OF THE DEPARTMENT OF JUSTICE

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James F. Neal, *Counsel*
Malcolm E. Wheeler, *Counsel*

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[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

TUESDAY, JULY 20, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10 a.m., in room 318, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias, Huddleston, McClure, Simpson, Rudman, Inouye, DeConcini, and Leahy.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

On the 24th of March of this year, the U.S. Senate adopted Senate Resolution 350 creating this committee and directing it to study domestic undercover operations of components of the Department of Justice. Among other things, we were asked to investigate the origin and initiation of undercover activities; standards for targeting suspects; continuation, modification, and termination of such activities; the [2] techniques that were used in these activities; the management and supervision of undercover operations and undercover agents and informants; coordination in such operations between the Department of Justice and the Federal Bureau of Investigation; and the price we pay, the costs that are involved as contrasted with the effectiveness of this law enforcement technique.

In conducting this inquiry, we do not begin at point zero. In 1978, in fact, the Senate Judiciary Committee conducted a series of hearings to lay the foundation for the development of a statutory charter for the Federal Bureau of Investigation. During those hearings, the committee began to explore the manner in which the FBI's use of undercover techniques had developed up to that point. As a result of those hearings, in 1979, Senator Kennedy introduced S. 1612, which was a bill known as the FBI Charter Act of 1979. In 1979 and in January of 1980, the Judiciary Committee conducted hearings on that bill and in the course of those hearings developed further information about the effectiveness, costs, policies, and practices that characterized FBI undercover operations.

All of those hearings occurred, however, before four significant events took place. First, on February 2, 1980, the public at large and we ourselves became aware of what is surely the most well-known undercover operation in the history of the FBI: the operation known as Abscam. Because that operation resulted in the indictment and conviction of seven Members of [3] Congress, and because eight separate trials were conducted, that single operation has resulted in the dissemination to the general public of more information about the undercover technique than the Judiciary Committee was able to develop in the hearings. Through the court testimony of numerous officials of the FBI and of the Department of Justice, through legal arguments made by prosecutors and defense counsel, and through the written opinions of judges, we have obtained many new insights into the benefits and into the costs to society of this law enforcement technique.

The second important event that occurred after the Judiciary Committee's hearings was that on the 5th of January 1981, the Department of Justice published the Attorney General's guidelines on undercover activities. This was the first time in history that the FBI had promulgated formal, comprehensive guidelines governing this law enforcement technique. The Senate has never, before now, examined those guidelines or heard testimony from FBI officials on their meaning and on their use.

The third event of importance occurred on December 2, 1980, when the Department of Justice issued the Attorney General's guidelines on criminal investigations of individuals and organizations. Those guidelines are the first formal, comprehensive guidelines ever published by the Department of Justice setting forth the policies and procedures that guide [4] the FBI in all of its criminal investigations, including those that involve undercover operations. Once again, the Senate has not previously held hearings on these guidelines or on the manner in which they relate to the undercover guidelines.

The fourth event also occurred in December 1980, when the Department of Justice promulgated numerous significant amendments to the Attorney General's guidelines on the use of informants. These guidelines, too, have not been reviewed by the Senate until this time.

Our goal, simply put, is to study in depth the safeguards that the FBI and other components of the Department of Justice have formally placed on themselves, to determine how those safeguards compare to past policies and practices, to determine how effective those safeguards are in real life, and to ascertain whether any action by the Congress in this area is necessary or desirable.

The importance of our inquiry is underscored by the enormously expanded use in recent years of undercover operations in the FBI's domestic law enforcement activities. Let me for the moment summarize the information developed to date on the evolution of these operations.

Although the undercover guidelines were not promulgated until January 5, 1981, the FBI apparently engaged in undercover operations at least from 1939 through the end of World War II. Virtually all of the documents reflecting undercover activities [5] before and during World War II arise out of the use of undercover agents to detect sabotage and espionage plans and acts in defense-related segments of the private industrial sector.

The documents provided to us show no specific use of the undercover technique between the end of World War II and 1972, although a few documents from that period discuss some of the costs and benefits of using undercover agents to infiltrate Communist organizations. Documents from 1972 suggest that the undercover technique was being used at that time in a limited fashion, primarily when FBI agents were investigating subjects seeking outlets for stolen property; that is, fences, and also to some extent in gambling and extortion cases.

Between January 1973 and December 1974, the FBI used undercover agents in approximately 30 investigative matters, almost all involving stolen property or fraud. The FBI continued to use the undercover technique during 1975 and 1976, but the documentation provided to us does not indicate the size or nature of its use during that period. The documents do show, however, that several of the undercover operations were joint investigations with local law enforcement agencies under the Law Enforcement Assistance Administration.

The Department of Justice's appropriation request for the 1977 fiscal year was the first that expressly requested funds for undercover activities. The request was for $1 million. That sum, exclusive of salaries and related expenses and **[6]** equipment, was in fact appropriated and budgeted for fiscal year 1977. In that year, the FBI conducted 53 undercover operations managed and funded solely by the FBI. The FBI also participated in several joint local-Federal undercover operations financed by LEAA funds. Between 1976 and April 1978, there were 20 such LEAA-funded joint operations. During this period, undercover operations in which the FBI participated were aimed at stolen property, organized crime, and political corruption.

As contrasted with that period, during the 4-year period 1978 through 1981, the FBI approved and initiated approximately 1,200 separate and discrete undercover operations, many if not most of which involved multiple subjects or targets. So, we went from approximately 50 a year to almost 300 a year on the average.

At this point I think I should note a particular circumstance. At the point in these hearings when we will take testimony concerning the undercover operation known as Abscam, we may resort to the use of code names such as Senator A, or Representative B, or Public Official C, or Private Citizen D. In these instances we will be referring to individuals who are mentioned in the Abscam files of the Department of Justice. Many of these individuals are individuals that the so-called middleman, with whom you will become familiar, said would accept money for corrupt purposes. **[7]** The FBI approved the offer of a bribe to a number of these individuals. With respect to these same individuals, there is absolutely no evidence of wrongdoing aside from the unsubstantiated and uncorroborated statement of middlemen, often corrupt middlemen. In the cases of these individuals, as we see them from the documents, one of the following things occur. These incidents are in addition, of course, to the publicly known cases on which trials have been held.

These are the kinds of situations: A bribe offer was approved, and a meeting was held; but no bribe was actually offered or, if offered, was not accepted. The documents mention five people in this category.

Second, the FBI approved the offer of a bribe, but the target did not attend the meeting. There were about nine people mentioned in this category.

Or it was a situation in which no bribe was offered and no meeting was held, but the name is in the files simply because the individual was targeted by a corrupt middleman in some unfavorable light. There are about 30 people mentioned in this category.

In view of these facts, the committee has decided that it would be unfair and inappropriate to identify these individuals in a public hearing. The mandate of the Senate, however, may require that the events surrounding the mention of some of these names should be explored. When and as this becomes [8] necessary, we will simply refer to these individuals by some designation not involving the use of their names or other identifying characteristics.

Let me state—and I say this very emphatically—that our mandate in this inquiry is not to punish the executive branch. It is not to exempt Members of Congress from the application of any proper and effective law enforcement technique. It is not to terminate the use of undercover operations. Senate Resolution 350 authorizes this committee to study existing guidelines and safeguards and to determine whether legislative action or oversight is needed to strike a proper balance between appropriate and effective law enforcement activities, on the one hand, and the statutory and constitutional rights of all citizens, on the other hand.

Quoting directly from Senate Resolution 350, the committee is authorized and directed to determine: "whether the existing laws of the United States are adequate, either in their provisions or manner of enforcement, to safeguard the rights of American citizens, to accomplish appropriate executive and legislative branch control of such law enforcement undercover activities, and to give appropriate authorization for components of the Department of Justice to engage in undercover activities."

In the first stage of our hearings, which will cover this week and next week, our witnesses will be Oliver "Buck" Revell, [9] who is now Assistant Director, Criminal Investigative Division, FBI, and who has been the chairman of the Undercover Operations Review Committee; Francis Mullen, who is now Acting Director of the Drug Enforcement Administration, and who has been at various times chairman of the Undercover Operations Review Committee and Executive Assistant Director of the FBI; Mike Wilson, who was FBI Headquarters' supervisory agent during Abscam; and John Good, who was the supervisory senior resident agent in Long Island during the undercover operation known as Abscam.

Next week, we expect to hear the testimony of Thomas Puccio, strike force attorney in Brooklyn, who coordinated the Abscam operation; Irvin Nathan, former Deputy Assistant Attorney General; Edward Plaza, assistant U.S. attorney in Newark; and John Jacobs and Larry Sharf, attorneys supervising the Abscam activities. Following these two weeks of hearings, and taking of testimony, we will consider the need, if any, for the testimony of Mel Weinberg and the advisability of seeking the testimony of the so-called middlemen of Abscam.

During the coming weeks, we will need to examine several specific undercover operations that have been completed, as well as Abscam. One will be a racketeering case. One will be a property crime case. The others are yet to be selected. In each instance, our basic fact questions will be: How are these operations actually conducted, what **[10]** are their costs, and what are their benefits? Our basic policy questions will be whether or not there is need for congressional action or for oversight in this area and, if so, what action or what oversight should be taken.

Let me now turn to the vice chairman of the committee, Senator Huddleston.

Senator HUDDLESTON. Thank you very much, Mr. Chairman. I think you have well laid out the parameters of the committee's endeavor, stating the background of the subject matter that we are to deal with.

I think from this side of the table we would just like to reaffirm your description of what the committee is to do and is not to do and to concur in what you have indicated. We are not here to absolve or apologize for any individual, Member of Congress or otherwise, who might have been involved in or caught in any kind of illegal or inappropriate activity. We are not here to in anyway unduly hamper the undercover operations carried on legitimately by the law enforcement agencies of this country.

I think it is appropriate to reflect on the statistics that you have given, which indicate that this particular type of law enforcement technique, that is the undercover operation, has grown with leaps and bounds in recent years. We cannot deny its effectiveness. It has been pointed out and demonstrated that in many instances these are the only kinds of **[11]** operations, the only kinds of techniques that prove effective in ferreting out certain kinds of criminal activity in this country.

I am certain I can speak for every member of the committee that we are not at all interested in doing anything that hampers the law enforcement efforts of our agencies in this regard. But I think it is important that the perception of this committee and its activities be corrected where we have seen it enunciated in what I consider to be very inaccurate terms. We have been referred to, for instance, as a hostile committee. I am certain that I speak for every member of this committee when I say we are not hostile to the Federal Bureau of Investigation or to the Justice Department or to any other law enforcement agency in the country. We are not hostile to undercover operations. We are not hostile to the idea that Members of Congress, perhaps above all citizens, ought to be above reproach and ought to be able to withstand whatever temptations may come to them from any source.

I might say we are hostile to actions that infringe upon the constitutional and legal rights of the citizens of this country. We are hostile to any kind of operation that is of a sensitive nature that is not properly controlled all the way down from the top echelon to the men and women in the field who are implementing a particular policy.

I think when we view the increase in this kind of **[12]** operation we come to the same conclusion that was reached not by a Member of Congress or by any person who was caught in this particular operation but by a Federal judge who said that this kind of process inevitably raises sensitive issues of public policy and public law. That is the area in which this committee, I think rightly, intends to investigate.

We will hear, of course, the testimony of those involved. We will see laid out guidelines that will in themselves appear to be protective and be appropriate. The real question is what actually happens in the real world. What happens from the time the guidelines are issued until the approach is made to an individual? And do, in fact, an individual's rights and liberties remain protected as the operation continues? I think that basically is what we are seeking.

I do not believe that anybody on this committee feels in anyway that our job is to try to bring about the demise of the law enforcement capabilities of any of our law enforcement agencies. We will proceed under that kind of mandate. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you, Senator Huddleston. Senator McClure?

Senator **McClure**. Thank you, Mr. Chairman. First I want to underscore my agreement with the statements that have been made both by the chairman and vice chairman with respect to our mission. I would add just a couple of notes.

[13] One is that Senator Mathias has mentioned the four categories in which people may have been named or involved in some way. I want to emphasize that that includes Members of Congress, State and local officials, and individuals. No inference can be drawn from the fact they were named other than the fact that sometime—by an informant, a middleman—their name was mentioned, except in the categories that Senator Mathias mentioned. We are faced with the dilemma of looking at individual names for individual cases in order to protect everyone else in the universe from any suspicion or expecting the fact that there might be those who say, well, there must have been something there because their name was mentioned, casting doubt upon 535 Members of the House and Senate. In fairness to the individuals who are involved, I feel very strongly that it would be wrong for us to use their names when there is no corroboration at all other than the fact that the name was mentioned by a middleman at one time or another.

In that connection, it is not the function of this committee to try those cases to determine whether or not a person was quilty or innocent, should have been investigated, or should not have been investigated. Our purpose is to look at the methods of investigation and the controls surrounding those methods.

I do want to underscore, too, from my own view, that Senator Huddleston is absolutely correct when he says this is [14] not a hostile committee. Several of us came from law enforcement backgrounds at one time or another and recognize the difficulties of law enforcement. Under modern court rules the difficulty is significant, of obtaining evidence that will stand up in court, under procedural restraints, the difficulties of getting statements from defendants, and the necessity of getting independent evidence that will make the case where a crime is committed. At the same time, we must recognize, as Senator Mathias has said, the need to keep that in proper balance with constitutional and statutory protections for the rights of individuals in our society. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you Senator McClure.

Senator Inouye?

Senator **Inouye**. Thank you very much, Mr. Chairman. I wish to associate myself with your remarks and those of my vice chairman. However, in addition I would like to indicate that oftentimes undercover activities are misunderstood. They are maligned. The perceptions one gathers are oftentimes much more important than the reality.

For example, it is common knowledge that among my colleagues in the Congress of the United States we oftentimes in our conversations ask aloud: "I wonder if my phone is tapped." There is no justification for making such a statement, but that is a common statement: "I wonder if my phone is tapped."

Second, when I undertook to participate in the recent [15] Senate trial of Senator Williams, several of my colleagues came forward to "congratulate" me. In most instances, they suggested that I was courageous. I could not understand why my position would be courageous. When I inquired further, why should I be courageous: "Aren't you afraid to be put on the FBI hit list?"

I think this is a sad commentary on a democracy if Members of Congress are oftentimes concerned whether their phones are bugged, whether there is such a thing as a hit list. Therefore, I hope that these proceedings will serve to clear the air and to assure the people of the United States, because I believe so, that these undercover activities are essential, that these undercover activities serve a good purpose and, for the most part, are carried out properly. Unfortunately, I am certain those in our intelligence gathering agencies will agree that, like any other organization, we have those who follow the rules and others who take the easy way. I think that the study of Abscam will indicate that there may have been moments when they should have done better.

I do hope, Mr. Chairman, that these hearings will not add to the cloud over the agency but will clear these clouds. With that in mind, I would like to once again join you in reassuring the FBI that this is not a hostile committee. Thank you, sir.

Senator **Mathias**. Thank you, Senator. Senator Simpson?

Senator **Simpson**. Thank you, Mr. Chairman. I would just [16] note that I must say I have become chary of the reference to our select committee as the Abscam Committee. I think that I express, as you all have done previously, the sentiments of the entire committee when I emphasize that we are not on a witch hunt nor are we on a whitewash. Our charge is to inquire fully into the operation of domestic undercover operations. As you have correctly pointed out, there are hundreds of those, a great increase in those in recent years.

I also was pleased to participate at the FBI charter hearings in 1979, when we began to probe what might be the best method to use in these operations. Indeed there are hundreds. We are certainly involved in one which is of special interest. We shall not shy away from that.

Undercover operations are a tough menu under any type of definition. It is very interesting to me to serve with a crew of tough old prosecutors here who have some interesting comments. It is a great learning experience for me. I have prosecuted on the city of Cody level. It was not exactly dazzling. The only thing we ever tapped there was a keg.

In your opening statement, Mr. Chairman, you have given the scope of our inquiry with careful presentation. I think you have appropriately set out what we will not be doing. I believe it is very important that we all have a clear understanding of what this committee will be inquiring into and what it will not be inquiring into.

[17] Let me just say that it is an honor and privilege to me to serve on this panel with Mac Mathias and D. Huddleston, our chairman and vice chairman. Both of them are very steady, very direct, and very thoughtful people. I hope that our inquiry will be the same. Thank you.

Senator **Mathias**. Thank you very much, Senator Simpson. Senator Leahy?

Senator **Leahy**. Thank you, Mr. Chairman. I would like to point out, as my good friend from Wyoming speaks of his prosecutorial experience at the Cody City level, he is quite correct in saying there are a number of former prosecutors on this panel. I consider it a privilege to be one of them. You can, of course learn at that city and State level. We have learned those things that are so crucial to law enforcement at the national level. That is, of course to be first and foremost against crime, a popular inquiry but yet courageous position. You want to fight crime but not so effectively that it all goes away because then it is hard to justify your budget. You learn to point with alarm at crime rates. Crime rates always go up. You can always find some area of crime that has gone up from the year before even if it means dusting off old statutes in Cody or Vermont or nationally, when you go before the city council or the State legislature or the Congress for a budget. So, there are some good things that come out of that experience.

[18] Periodically you have some of the substantive issues of actually looking at how law enforcement should be run. That is not necessarily an incidental thing to your operation. We always like to think it is not incidental at the national level.

I know that as a prosecutor and undergoing undercover activities there were certain guidelines followed in my office. We had very specific guidelines, in fact. I think that is important to look at here. Were there specific guidelines for undercover activity on the part of the FBI? Were there ones here? Then, if there are, it is also extremely important for the American people to know what were they. Last, who enforced them and to what extent did they enforce them? To what extent did they know they existed?

Ultimately, you come down to two questions, and this committee has two questions to answer. That is, was the U.S. Government out to stop crime or to create crime? Was the U.S. Government out to catch known criminals or to create new criminals? I think that those are the issues that should be explored. Certainly the Senate has a right to know the answers to that. I think every responsible law enforcement person at the national or State level also wants the answers to that. The answers to those questions will go a long way toward maintaining the credibility, if deserved, of our law enforcement agencies or point to corrective action if the answers are not [19] what we might like to hear.

I concur with my chairman that this committee does not come as a witch hunt committee but a committee given a strong and serious bipartisan mandate by the U.S. Senate on a most important issue and one that affects, really, the whole fabric of justice in our country. Thank you.

Senator **Mathias**. Thank you, Senator Leahy. Senator Rudman?

Senator **Rudman**. Thank you very much, Mr. Chairman. Let me just start out by saying that I do not believe that these hearings should commence without an observation that should not be lost on anyone. My experience here is brief, but from my understanding it is rather remarkable to have a committee constituted with an even number of members of the majority and the minority. I think it should not be lost on anyone that the decision was made at our very first meeting that we would not have a proliferation of staff. We would have a staff that would serve both the majority and minority. We are fortunate to have Mr. Neal and Mr. Wheeler because they are extraordinary people.

I believe that we will prove in the course of this hearing that in matters that have this kind of national significance that relate to the very constitutional freedoms that are guaranteed to all of us that it is important that there not only be a perception but an actual bipartisan spirit in which [20] there is no division, if you will, of responsibility other than to find the truth.

Other than that, Mr. Chairman, I just want to read one very brief guideline from the Attorney General's guidelines on criminal investigation. I believe that, as these hearings develop, with all of the collateral information that will come before the committee, we will come back to a central theme that will relate in large measure to what is contained in this particular guideline. I just want to read it. It says that "[a] key principle underlying these practices, and reflected in these guidelines is that individuals and organizations should be free from law enforcement scrutiny that is undertaken without a valid factual predicate and without a valid law enforcement purpose."

It seems to me that that sets forth the whole constitutional theory of probable cause that underlies our criminal justice system. I intend to pursue that rather narrow point in the course of these hearings.

I want to associate myself with the remarks of our chairman and vice chairman, who really act more as cochairmen during our entire deliberations. I look forward as a very junior member of the Senate as being privileged to serve with them on this committee.

Senator **Mathias**. Thank you, Senator.

The first witness is Mr. Oliver B. Revell, Assistant [21] Director, Criminal Investigative Division, Federal Bureau of Investigation.

Mr. **Revell**. Thank you, Senator. I would like to introduce Special Agent Bob Ricks, who is with me at the table. Agent Ricks was the first member from our Legal Counsel Division on our Undercover Review Committee. He later served as my special assistant and participated on the working group creating the various guidelines that the committee members have mentioned today. He has been a very integral part of the development of the FBI's policy and procedures in undercover operations. Therefore, I have asked him to join me in order to assist in giving the full explanation that I believe the Senate will want to hear.

[22] STATEMENT OF OLIVER B. REVELL, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FEDERAL BUREAU OF INVESTIGATION, ACCOMPANIED BY BOB A. RICKS, SPECIAL AGENT

Mr. REVELL. Mr. Chairman and members of the committee, I am here today at your request to testify about the FBI's undercover operations. As the Assistant Director in charge of the Criminal Investigative Division, I am responsible for all criminal and terrorist undercover operations conducted by the FBI. Within the recent past, it was my pleasure to serve as the special agent in charge of a field office of the FBI. During my tenure in that position, I supervised several major undercover operations. I trust that these duties, and my experience, have instilled within me both a field and headquarters perspective of undercover operations of sufficient depth that I am able to provide facts and information to this committee and, by so doing, to assist it in carrying out the important and difficult responsibilities imposed on it by Senate Resolution 350.

Two major issues present themselves. Should the FBI continue engaging in undercover operations? Are there sufficient controls on the Bureau's undercover operations?

With your permission, I shall address these issues. The thrust of Senate Resolution 350 appears to be directed to those undercover operations which focus on public corruption. [23] It may be of value to bear in mind that the majority of undercover operations are not directed at allegations of public corruption or the solicitation of bribes by public officials. Indeed the Bureau has now or has in the recent past had operations directed at terrorists, organized crime families and other structured criminal enterprises, embezzlement, theft and/or sale and distribution of technological information, automobiles, jewelry, precious metals, heavy equipment, and narcotics.

Should the FBI engage in undercover operations?

It is my testimony today that the answer to this question should be an unqualified yes.

I might add, from the comments of the Senators, I believe that is your testimony here today.

Undercover operations are lawful, they are indispensable, and they are effective. That, of course, is the basis of the testimony of the witnesses that you have called to establish those points.

There seems little doubt that undercover operations are lawful. "Society is at war with the criminal classes," Justice Roberts observed a half century ago, "and courts have uniformly held that in waging this warfare, the forces of prevention may use traps, decoys, and deception to obtain evidence of the commission of crime." Recent decisions by the Second and Third Circuits make clear there is no constitutional barrier to a law [24] enforcement agency's engaging in undercover operations.

Congress has specifically authorized the use of appropriated funds for these operations, providing $1 million for fiscal year 1977 and additional funds in every succeeding year. For 1982, the amount has increased sixfold, to $6 million.

To be sure, there are restrictions, found in the Constitution and elsewhere, on the manner in which an operation may be conducted, and I shall speak to these shortly. Suffice it to say for now, as far as I know there is no case which holds that the Constitution prohibits undercover operations. That being so, the question is in essence, as the Third Circuit said in *Jannotti,* "more appropriately considered through the political process." Therefore, resolution of the question is left to this committee, the whole Congress, and ultimately the American people.

The investigations of some crimes can be addressed in the traditional manner. An FBI agent can knock on the door, identify himself or herself and ask questions. That in turn can lead to the identification of witnesses who can appear and testify before a grand jury or at trial. That presupposes, of course, that the FBI agent already knows or suspects that a crime has been committed. This method of investigating crime is effective only when someone knows the crime has been committed, someone has reported that crime, the criminal activity has transpired in front of witnesses or evidence may be found **[25]** at the scene of the crime or in documents.

In many cases this traditional approach simply will not work. It will not produce the desired results in those cases in which the criminal bosses and kingpins have insulated themselves. It may result in the successful detection and prosecution of lower level criminals, but that is not good enough. The FBI ought to be about the business of bringing to justice those in the upper echelon of crime.

This traditional approach is also doomed to failure in the investigation of so-called victimless crimes. It does not work and cannot work in these cases because they are consensual crimes, carried on in secret with no one to complain. As a result, a law enforcement agency has no way of learning that a crime has been committed.

Justice Powell stated in *Hampton*:

> One cannot easily exaggerate the problems confronted by law enforcement authorities in dealing effectively with an expanding narcotics traffic, which is one of the major contributing causes of escalating crime in our cities. Enforcement officials, therefore, must be allowed flexibility adequate to counter effectively such criminal activity.

The Third Circuit, again in the *Jannotti* case, observed:

> Official corruption, in the form of bribery and extortion involving public officials, can, like the narcotics sales involved in *Hampton,* easily elude detection, since both **[26]** parties to the transaction have an interest in concealment. Indeed, bribery may be even more difficult to uncover than drug deals.

Attorney General William French Smith said recently:

> In the course of our increased efforts against carefully concealed crime and corruption, the Department of Justice quickly learned what must now be regarded as a fundamental tenet. An enforcement program can never succeed without the effective use of undercover operations. In most cases, there is only one way for law enforcement to apprehend such criminals and to deter such crimes. It must interject its agents into the midst of corrupt transactions, it must feign the role of corrupt participant. In short, it must go undercover.

Undercover operations not only are indispensable, they are highly effective. Director Webster testified a few months ago:

> As in all endeavors, we have experienced some significant successess and we have suffered some setbacks in specific investigations. The overall results seem to me to be very positive.

In combined fiscal years 1980 and 1981, our funding for undercover operations was about $7.5 million, less, considerably less than 1 percent of our total budget for that period. Those operations led to recoveries worth over $109 million, slightly over 1,000 convictions, and prevented substantial economic loss to the public.

[27] Permit me to describe briefly five cases illustrative of the effectiveness of the undercover technique.

The news this morning carried the tragic events surrounding the death of at least two of the members of the Royal Guard of the Queen's Guard in London. That bombing has now been claimed by a group of individuals known as the Provisional Irish Republican Army. The case I am about to cite involves that particular group.

It is code named Bushmill. It was a complex operation that focused on identifying and prosecuting a compartmentalized network of terrorists who procure, maintain, and ship weapons and munitions to the Provisional Irish Republican Army in Northern Ireland. With the assistance of U.S. Customs, FBI undercover agents delivered 42 sophisticated automatic weapons to two subjects 2 days after they paid us $16,800. They were arrested, as was a confederate, following the search of his residence during which a quantity of weapons and ammunition was seized. We believe we have apprehended some of the Provisional Irish Republican Army's best sources of arms.

I might point out we have had further success against this group in continuing undercover operations in the very recent past.

In an operation entitled Bancoshares, the Bureau formed a fictitious corporation with undercover agents posing as brokers [28] willing to launder some of the vast sums of money accumulated by narcotics traffickers. The undercover corporation offered several services: the conversion of small bills to large bills and of currency to cashiers' checks; and the depositing of our clients' currency in Miami area banks to protect them from being identified as the source of the funds.

Some insight into the magnitude of the drug problem can be gained from the amount of money the criminals brought to us. Transactions which grew to over $1 million per day were videotaped. A total of $178 million was laundered.

We have recovered, seized, and/or frozen seven airplanes and 20 vehicles, large quantities of cocaine with a wholesale value in excess of $900,000, a 4,600-acre ranch with an estimated value in excess of $4 million, three residences, and $18 million in cash. To date, over 60 individuals have been indicted, 45 have been arrested, 13 have been convicted, and 22 remain fugitives.

Pengem is another case which has recently been in the news. As of yesterday, Federal grand juries in San Francisco and Sacramento returned indictments against a foreign corporation and four of its employees in this particular case. Other indictments were previously returned.

Pengem attacked the receipt, sale, and/or counterfeiting of stolen electronic components and high-reliability microprocessors. In this operation we established an undercover [29] brokerage firm operating in the "Silicon Valley" of California.

A cooperating witness, a corporation, told us it had learned that a foreign corporation possessed highly sensitive information which had been obtained illegally. To uncover the conspiracy to violate the interstate transportation of stolen property statute, an undercover agent was introduced to the officials of the foreign corporation and entered into negotiations for additional sensitive material. Several officials purchased hardware and/or software from our agent which they believed was stolen from the domestic corporation.

Less than 1 month ago, the FBI arrested nine individuals. Indictments have been returned for 17 individuals and one corporation. I just gave you a more recent update on that information.

In our closely intertwined Coldwater-Timber-Genus operation, undercover agents were introduced by informants into La Cosa Nostra at the highest levels in Milwaukee, Tampa, and New York City. They successfully penetrated illegal business dealings and collected evidence of murder, loansharking, extortion, and corruption. Eight undercover agents were employed in varying roles for periods of 3 months to 6 years.

Additional evidence obtained through court-ordered electronic surveillance supported indictments of 16 people in Milwaukee, 11 in New York, 6 in South Carolina, and evidence [30] is being presented against more than 30 subjects in Tampa. Included among those charged are leaders of La Cosa Nostra in two cities—leaders who have previously avoided criminal charges.

In the case known as Corcom, our Oklahoma City office, in conjunction with the IRS, has conducted an extensive investigation into allegations of pervasive corruption within the Oklahoma county commissioner system. Using undercover techniques and cooperating individuals in a covert manner, our investigation has led to the conviction of or entering of guilty pleas by 114 subjects; 164 more have signed agreements to plead quilty.

As a further result of this investigation, the Governor and the Oklahoma State Legislature are considering reforms in the county commissioner form of government. In addition, the cost of materials and equipment to counties has decreased dramatically.

These cases typify the effectiveness of the undercover technique against the entire range of criminal conduct. They do more than that. They demonstrate that some of our more recent operations are highly complex and in many ways far removed from the more simple sting operations with which we began a few years ago.

Also, they illustrate that undercover operations are a device or technique which we employ in conjunction with other [31] techniques such as interviews, electronic surveillance, cooperating witnesses, informants, and record and document examinations.

Undercover operations are lawful. They are indispensable and they are effective.

Are there sufficient controls on the Bureau's undercover operations?

Undercover operations are a valid exercise of police power; the manner in which these operations are implemented is an entirely separate issue. Just as a statute may be constitutional on its face but enforced in an unconstitutional way, so too can undercover operations be valid in principle but practiced in an impermissible fashion.

The need for controls is obvious, and several are in place. Some are as old as the Republic, others are new; some are found in law books, others in internal policy documents.

FBI investigations, covert and overt, are controlled first and foremost by the Constitution, in particular the first, fourth, fifth, and sixth amendments. Court decisions, those interpreting the Constitution and those without constitutional underpinnings, provide additional guidance. Other controls find expression in applicable statutes and in Department of Justice and FBI policy. For example, the electronic interception of wire and oral communications, and the use of pen registers, body recorders, and video monitoring equipment are [32] subject to controls imposed all or in part by the Congress, the courts, the Attorney General, and the Director of the FBI.

Recognizing the inherent dangers and potential liabilities in undercover operations, former Attorney General Benjamin Civiletti issued guidelines on the Bureau's undercover operations on December 31, 1980. Drafted with the assistance and full cooperation of the Bureau, this document addresses the manner in which proposed undercover operations shall be authorized, monitored, and controlled. Of course, the Attorney General's Guidelines on FBI Use of Informants and Confidential Sources, and the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations also are applicable to undercover operations.

It is within the framework of these controls that undercover operations are conceived, approved, implemented, and supervised.

Undercover proposals by and large originate in the field. Special Agents in Charge of field offices are authorized by the guidelines to approve operations only if they will be of short duration, relatively inexpensive, and not involve sensitive or certain fiscal circumstances enumerated in the Undercover Guidelines.

All other proposals must be approved at FBI Headquarters. Before the proposal is sent to headquarters, it must be approved by the field office supervisor and the Special Agent [33] in Charge of the field division after consultation with his legal adviser, a specially trained special agent attorney. The strike force attorney or the U.S. Attorney must concur in the proposal. The field office must reduce to writing their comments and observations concerning the legal issues involved, including entrapment and due process, as well as such additional managerial concerns as the goals, cost, and overall worthiness of the plan.

Only if all of these conditions are met may a Special Agent in Charge submit his proposal to FBI Headquarters. At Headquarters the entire proposal is scrutinized carefully by the Undercover and Special Operations Unit and by an agent supervisor in the section having responsibility for the subject matter. If the headquarters supervisor approves the proposal, it is then reviewed by the section chief, an experienced agent at the super grade level. If the section chief so recommends, the proposal is submitted to the Criminal Undercover Operations Review Committee.

This committee, chaired by a Deputy Assistant Director of the Criminal Investigative Division, includes the Chiefs of the Organized Crime, White-Collar Crime, and Personal and Property Crimes Sections; representatives of the Undercover and Special Operations Unit, the Bureau's Legal Counsel, and Administrative Services Divisions; and the FBI's contracting officer, an attorney skilled in the law of **[**34**]** contracts. The Department of Justice has four members on the committee. They are the Special Assistant to the Assistant Attorney General of the Criminal Division, the Chief of the Public Integrity Section, and the Deputy Chiefs of the Fraud and the Organized Crime and Racketeering Sections. Also on the committee are one of the Director's Special Assistants and one of my Special Assistants. Both of these Special Assistants are attorneys. Other officials and supervisors in specialty areas attend committee meetings as necessary.

This committee has as its duty the thorough review of each submission, and it must make a determination, following a penetrating analysis of all facets and aspects of the proposals, whether or not the operation should be approved. Its recommendations are submitted to me. In particularly sensitive situations, the proposal is submitted to the Director for approval, as required by the guidelines, recommended by the committee, or at my determination.

No operations may be approved for more than 6 months. Any operation requiring more than that time must be re-presented to the committee. So, too, must any operation in which the scenario changes significantly.

This committee, established by Director Webster in the fall of 1978 and embodied in the Attorney General's Undercover Guidelines, has become the Director's and my main advisory board in the approval process for undercover operations.

[35**]** Once approved and implemented, undercover operations receive continuing supervision and review by field office and headquarters management personnel along with an ongoing dialog between pertinent FBI and Department of Justice counterparts. Additionally, onsite reviews by appropriate headquarters personnel are selectively conducted on sensitive and/or extended operations. Also, the Office of Inspection conducts a financial and investigative audit of all undercover operations.

We are not unmindful that public corruption investigations, whether they are overt or undercover, by their very nature, are inherently sensitive since they may result in damage to the reputation of public figures or institutions. The decision to open an investigation must be based upon a thorough review of such factors as the source of the allegation, the credibility and motivation of the source of the allegation, whether the source was in a position to know the information he furnished, whether independent information exists to corroborate the allegation, and whether the allegation would constitute a violation of Federal law.

All undercover operations in which officials in executive or high-level positions are suspects must be approved by FBI Headquarters. Once a decision is made to open an investigation, the U.S. Attorney or strike force attorney must be consulted as soon as practical.

[36] Special Agents in Charge are authorized to close public corruption investigations administratively when the allegations are determined to be false or baseless. Whenever a Special Agent in Charge closes a case administratively, he is required to notify the U.S. Attorney or strike force attorney in writing within 30 days. When the investigation reveals a criminal act may have been committed, the case is presented to the appropriate Federal prosecutor.

The payment of bribes to public officials must be and is tightly controlled. We have structured our approval authority so that the higher the level of the official involved, the higher the FBI approval level must be. Only the Director, for example, can approve the offering of bribes to such persons as elected Federal officials.

The Attorney General's Guidelines on FBI Undercover Operations mandate that in addition to complying with any legal requirements, the approving authority should be satisfied that the following conditions are met before authorizing an operation involving an invitation to engage in illegal activity: the corrupt nature of the activity is reasonably clear to potential subjects; there is a reasonable indication that the undercover operation will reveal illegal activity; and the nature of any inducement is justifiable in view of the character of the illegal transactions in which the individual is invited to engage.

[37] Controls are in place for those cases in which informants are involved. The Attorney General's Guidelines on FBI Use of Informants and Confidential Sources address the development and operation of informants, instructions which must be given to informants, informant participation in authorized and unauthorized criminal activity, payments to informants and other relevant issues.

The criminal guidelines, to which I referred earlier, provide guidance for all investigations by the FBI of crimes and crime-related activities. The standards and requirements govern circumstances under which an investigation may be begun, the permissible scope, duration, subject matters and objectives of an investigation.

Superimposed on any description of existing controls are the ability and integrity of the special agents of the FBI, undercover agents out on the point and field and headquarters supervisors. Unless FBI employees are able, unless they are competent, unless they maintain a steadfast adherence to the controls I have just described, the FBI will fall short of the mark.

So that we do not miss the mark, we recruit as special agents the most talented and able men and women we can. We train them thoroughly, We provide our agents with refresher training. We offer them guidance from supervisors trained in managerial responsibilities and from lawyers both in the field [38] and at headquarters who have completed courses of instruction in such specialty areas as the law of entrapment, search and seizure, confessions, and right to counsel.

Undercover agents are carefully selected from a pool of volunteers. We train them, the handling agents, and the undercover agent's supervisor in such topics as legal matters, informants, stress factors, psychological aspects of undercover work, narcotics investigations, and money laundering or financial transactions laundering.

The character, quality, and dedication of the men and women of the FBI, selected and trained as they are, serve to control FBI undercover operations.

Additional safeguards exist as well.

Some of the techniques employed in undercover operations receive judicial scrutiny as the cases as unfolding. Applications for wiretaps and, under some circumstances, visual surveillance devices, must be submitted to and approved by a court. Congressional oversight, as evidence by this hearing, is another check, as is the budget process. Finally, as the Second Circuit noted in the *Myers* case, "The normal constitutional and statutory protections of the criminal process remain available to the accused."

These, then, are the substantial controls and safeguards on our use of the undercover technique.

By using the undercover technique, the FBI has been able **[**39**]** to discharge its mandated duty to attack crime with unprecedented vigor. We have stuck at public corruption, organized crime, terrorism, narcotics, and property crime as never before. With the support of Congress and the American people, we shall achieve even greater success in the future.

Senator, if I may, I would like to comment on just a couple of things that were mentioned by the various Senators.

Senator MATHIAS. If I can interrupt you, Mr. Revell, we thank you for that statement. You surely may make that comment. First, let me ask Senator DeConcini, who has joined us, whether he wishes to make any opening statement.

Senator DECONCINI. Thank you, Mr. Chairman. I have no opening statement.

Senator MATHIAS. Mr. Revell, as you know, because I think you have received a copy of Senate Resolution 350 and the rules of this committee, your testimony under questioning should be under oath in accordance with the rules. If you will stand, we will administer the oath. Mr. Ricks, if you will stand also.

Do you sweat that the testimony you shall give before this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. REVELL. I do.

Mr. RICKS. I do.

Senator MATHIAS. Now you may proceed.

[40**]** Mr. REVELL. Senator Inouye, I would like to assure you sir, from my 18 years of experience in the FBI that there is no hit list on Senators. There is no black list or anything else. I can assure you that we appreciate the full range and scope of your responsibilities. Those of us in the FBI know of your distinguished service on various committees, including the Intelligence Oversight Committee. I can assure you that you should not have, and no Senator or Congressman should ever have, any concern that the FBI has any type of list that would in any way impugn the Members of Congress.

Controls over undercover operations were mentioned. I have had some degree of experience in law enforcement throughout the United States. And I can state without any equivocation that there are more controls, more safeguards, and more procedures and policy governing FBI undercover operations than any other law enforcement activity in these United States and perhaps in the world.

I think that the hundreds of documents provided to counsel will certainly attest to the great effort that we have made to insure that undercover operations meet the test of legitimacy and effectiveness and efficiency.

We have previously been constrained to state our position on some of these very sensitive **[41]** undercover operations. Obviously, there has been a great deal of speculation in the press. Some of it has been accurate. A great deal has been inaccurate. But, since there was pending litigation in most of these cases, the Bureau and the Department of Justice have been unable to respond. We hope that these hearings will be a means by which we can tell our story in a positive fashion that will satisfy the Senate and the American people as to the legitimacy and effectiveness of our operations.

At this point, sir, I am available to answer questions.

Senator **MATHIAS**. For the first questions, I am going to turn to the Chief Counsel of the committee, Mr. James Neal.

Mr. **NEAL**. Mr. Chairman and members of the committee, I will not be asking the questions of this witness. The Deputy Chief Counsel, Mr. Wheeler, will. But may I say a couple of things for the record in order that we can start making the record in this matter?

For the past several weeks, Mr. Wheeler and I have been reviewing the Attorney General's guidelines, interviewing witnesses, including officials of the FBI, scanning transcripts and documents generated in court proceedings, and reading approximately 50 volumes of confidential Abscam materials in the files of the Department of Justice. Mr. Chairman, as you know, this material is available to counsel and to members of **[42]** the committee. We will be using a number of those documents during the course of this hearing. Those documents will not be available to the public under the restrictions put on us by the Department of Justice.

Based upon all of our work, I have two observations. First, we have found that there now exist many internal guidelines on FBI investigations, including undercover operations. There may be inadequacies in these guidelines, errors in their interpretation, and problems in their implementation. It should not go unnoticed, however, that the mere existence of guidelines is an improvement over my days as a prosecutor and reflects an awareness by the FBI of the risks, inherent in undercover operations and an effort to address those risks.

Second, Mr. Wheeler and I believe we have been getting excellent cooperation from high-level officials in the Headquarters of the FBI. We believe this reflects an awareness by those officials that Congress has a role to play in respect to this technique of law enforcement and a willingness by these high officials to aid Congress in that role.

Before continuing, and simply for the record, Mr. Chairman, with your permission, I would ask that certain documents be made appendixes to the hearings of this committee. These documents are, one, the Attorney General's Guidelines on Undercover Operations; two, the Attorney General's Guidelines on Use of Informants and Confidential Sources; three, the **[43]** Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations; four, a memorandum from legal counsel to the Director of the FBI concerning the legality of various undercover techniques dated April 4, 1978; five, the testimony of former Assistant Attorney General Philip Heymann before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary of the House of Representatives on March 4, 1980, and June 3, 1982; six, the testimony of FBI Director William Webster before the same committee on March 4, 1980, and April 29, 1982; finally, a copy of the Undercover Guidelines of the Drug Enforcement Administration dated December 28, 1976. I will see that these are made appendixes to the record, Mr. Chairman, with your permission.

Senator MATHIAS. Is there objection to the request of counsel? Without objection, that will be made a part of the record.

[See Exhibits 1-7, pages 86-151 *infra.*]

[44] Mr. NEAL. Let me state that Mr. Revell and Mr. Ricks are here to tell us about undercover operations, what they are, define terms that somehow seem to get different meanings as they go around in the public domain, tell us how they are conducted, how they are controlled, how they are terminated. In all of these instances Mr. Revell and Mr. Ricks will be speaking generally of undercover operations. Tomorrow we will get a little bit more specific into one particular undercover operation with Mr. Francis Mullen. Mr. Chairman, with your permission I would ask Mr. Wheeler to commence the interrogation.

Senator MATHIAS. Mr. Wheeler?

Mr. WHEELER. Thank you, Mr. Chairman. Mr. Revell, I think it was Voltaire who said that the secret of being a bore is to tell everything. I hope we can prove him wrong, at least with respect to undercover activities.

Perhaps we should establish first, Mr. Revell, your familiarity with the guidelines. In your opening statement you refer to three sets of Attorney General's guidelines, I believe. One was the Guidelines on Undercover Operations. The second was the Guidelines for Criminal Investigations. The third was the Guidelines on Informants and Cooperating Individuals. Is that right?

Mr. REVELL. That is correct.

Mr. WHEELER. Do all of those sets of guidelines govern [45] all undercover operations?

Mr. REVELL. By and large, although there has been some limited involvement in the area of the domestic security guidelines, particularly on the types of informants and qualifications for informants in those investigations.

Mr. WHEELER. In addition, you also have some other guidelines that are not published as such, do you not, something that we loosely refer to as bribery guidelines?

Mr. REVELL. We have an internal policy as to approval levels for both level of official and level of payment required. It is an internal document within the FBI, yes.

Mr. WHEELER. That internal document that you are referring to requires that, when the FBI is about to offer a bribe to a particular public official, that must be approved by a particular official within the FBI. Is that correct?

Mr. REVELL. That is correct.

Mr. Wheeler. Chairman Mathias noted in his statement that all three sets of the guidelines that you have just referred to were promulgated by the Attorney General in late 1980 or in January of 1981. Am I correct that you were the Assistant Director of the FBI in charge of criminal investigations during that period?

Mr. Revell. I was Assistant Director at the time that all of the guidelines were signed. One of the guidelines was actually transmitted to the field after I moved to another [46] Assistant Director position.

Mr. Wheeler. In addition, you were the chairman of the Undercover Operations Review Committee for a period between September 1979 and June 1980?

Mr. Revell. That is correct.

Mr. Wheeler. You were familiar with the FBI's policies and practices with respect to undercover operations during that period when you were the chairman?

Mr. Revell. Yes.

Mr. Wheeler. And that period included most of the instances in which Congressmen or Senators were offered bribes in the operation known as Abscam, did it not?

Mr. Revell. Although I believe that there had been some payments before I actually arrived at headquarters, essentially that would be correct.

Mr. Wheeler. So, to the extent that there are any differences between the policies and practices that governed FBI undercover operations during that important part of Abscam and the guidelines that exist today, you would be familiar with those differences?

Mr. Revell. In general terms. This has been an evolutionary process. There are literally hundreds of documents. I might have to go back and refresh my recollection as to a particular point, but I believe in overall general [47] terms that would be correct. Yes, sir.

Mr. Wheeler. In particular, the Director of the FBI, Judge Webster, and the then Attorney General, Mr. Civiletti, testified before the House subcommittee known as the Edwards committee that the guidelines that were adopted, the undercover guidelines, essentially incorporated all of the policies and practices that had existed essentially just prior to the adoption of the guidelines. Has anything in your experience as the chairman of the Undercover Operations Review Committee or as the Assistant Director for Criminal Investigations caused you to disagree with that testimony by the Director?

Mr. Revell. I think the modifier "essentially" is very important because the guidelines obviously to some degree are more complex and certainly more inclusive than the then existing policy and practices. But I think with that modifier "essentially" that that would be the case; yes.

Mr. Wheeler. the guidelines, we should clarify as to what their effect is. Do the guidelines create any rights in any individual who may be harmed by a violation of the guidelines?

Mr. Revell. No; they do not. In fact, there is a reservation in each of the guidelines which specifically states that they do not create a new right under the law.

Mr. **Wheeler**. Can any agent or FBI official who violates the guidelines be prosecuted in any fashion by the Federal [48] Government?

Mr. **Revell**. They cannot be prosecuted for a violation of the guidelines. They can be subjected to administrative action for a violation of guidelines, as with any other policy.

Mr. **Wheeler**. And there are FBI internal policies and procedures for imposing sanctions on FBI officials and agents who violate the guidelines?

Mr. **Revell**. There are for those who violate policy. The guidelines certainly would qualify as policy.

Mr. **Wheeler**. Since the undercover guidelines were first published in January 1981, have there been any instances in which FBI agents or officials have been sanctioned by the FBI for violating the undercover guidelines?

Mr. **Revell**. There have been some instances where agents have been disciplined as a result of activities in undercover operations which were not approved, which were not sanctioned, or which were not professional. As to whether those activities specifically violated a provision of a guideline or the undercover guidelines, Mr. Wheeler, I would have to research those individual cases. I cannot recall one specifically offhand. From January 1981 until May of this year, I was in charge of administrative operations, and I was responsible for discipline, personnel matters, and so forth. I do have specific knowledge that there were certain agents who were disciplined as a result of [49] activities involved in undercover operations. None of them were illegal. None of them violated the rights of defendants. They did violate Bureau rules and regulations and policies and practices.

Mr. **Wheeler**. In testimony before the Senate Judiciary Committee and also in testimony before the House Edwards committee, Judge Webster has on a couple of occasions stated that he views Congress as having an oversight responsibility with respect to these guidelines. Do you know whether the guidelines were submitted to the Senate or to any committee of the Senate before they were actually published by the FBI?

Mr. **Revell**. I am not certain, but it is my understanding that prior to their being publicly released they were delivered to, I believe, the judiciary committees of both Houses.

Mr. **Wheeler**. Has the Judiciary Committee of the Senate been informed of any amendments to the guidelines that have occurred since January 5, 1981?

Mr. **Revell**. I do not believe it has been informed of any amendments, nor am I aware that there have been any amendments to the guidelines.

Mr. **Wheeler**. You are not aware of the existence of any amendments to the guidelines?

Mr. **Revell**. Amendments; no.

Mr. **Wheeler**. Do you have a copy of the guidelines there, [50] Mr. Revell?

Mr. **Revell**. Yes, I do.

Mr. **Wheeler**. Paragraph B of the Undercover Guidelines requires that any proposed undercover operation that will concern an investigation of possible corrupt action by a public official requires approval by the FBI Headquarters, the Undercover Operations Review Committee, and the Director or his designated assistant director. Is that correct?

Mr. Revell. That is correct.

Mr. Wheeler. I take it this is because investigations of political corruption raise some substantial, serious problems such as first amendment, speech and debate clause, and separation of powers. Is that your understanding as well?

Mr. Revell. Public corruption cases of public officials are considered a sensitive circumstance under the Undercover Guidelines.

Mr. Wheeler. You understand, Mr. Revell, that under our agreement with the Justice Department I cannot refer to a specific document. But I do have some documents here. I am going to try to refer to them so you will know what I am referring to. If you would like to see it, please let me know.

I believe you are familiar with a document from the files of the Department of Justice that was disseminated in the middle of 1981 that essentially redefines the term public official as it is used in paragraph B of the Undercover [51] Guidelines. In particular, under this document—do you know what document I am talking about?

Mr. Revell. Yes, I do.

Mr. Wheeler. Under that document the term public official does not include State senators, does it?

Mr. Revell. That is correct.

Mr. Wheeler. And it does not include State representatives.

Mr. Revell. That is correct.

Mr. Wheeler. And it does not include police chiefs.

Mr. Revell. That is correct.

Mr. Wheeler. Or members of zoning commissions——

Mr. Revell. Or building inspectors, patrolmen, and so forth.

Mr. Wheeler. If you had asked, Mr. Revell, the members of the Judiciary Committee of the Senate when they were provided the Undercover Guidelines whether they thought that the term "public official" as used in paragraph B would include a State senator, what do you think they would have said?

Mr. Revell. That is speculative, Mr. Wheeler. The term "public official" is undefined in the guidelines. The document you refer to was submitted to the Attorney General by the Director and set forth the operational definition of the term as we were using it, subject to any correction or redirection by the [52] Attorney General of that operational definition. The fact that State senators were not or State legislators were not in that particular definition did not suggest that we believe that they are unimportant. There was a rationale behind that which can be explained. Mr. Ricks was a drafter of that particular correspondence, so he can explain that particular rationale. But I wanted to make the point that we were not redefining public official. The term was not defined. We were giving our operational definition subject to any correction or redirection by the Attorney General of that particular definition.

Mr. Wheeler. Mr. Revell, did you have an opportunity to review the documents that were provided to us as counsel to the committee by the FBI that constitute the background and clarification documents for the Undercover Guidelines?

Mr. REVELL. Yes.

Mr. WHEELER. Are you aware that one of those documents again in the middle of 1981 expressly refers to the memorandum that we have been discussing as constituting revisions in the Attorney General's guidelines and that another memorandum in the same period refers to the change in the definition of public official as a change in the definition and as a new definition?

[53] Mr. REVELL. I do not recall seeing those particular documents, although I did review all the material that was provided to you. Irrespective of what might be said in one of those documents, when you do not have a definition within a guideline, then you must provide an operational definition. Certainly, "public official" does not mean all 3 million public employees in the United States. Therefore, it was essential that we have an operational definition. Of course, it was approved by various officials before it was sent to the Department of Justice, including those members of the review committee, such as the Assistant Chief of the Public Integrity Section. It was sent directly to the Attorney General, as I said. So, if he indeed disagreed—and these are his guidelines—he could redefine that operational definition for us.

Mr. WHEELER. Are you suggesting, Mr. Revell, that the limited definition of "public official" that appears in that 1981 document is essentially the most reasonable definition?

Mr. REVELL. It was an operational definition based upon the experience at the time. I now believe that certainly State legislators should be incorporated as public officials. Any redefinition would be with the concurrence of the Department of Justice and the Attorney General. The terms [54] that are undefined must be given an operational definition. Otherwise, they are unworkable.

Mr. WHEELER. But it is also true, is it not, Mr. Revell, that the criminal investigation guidelines employ a different definition of the term "public official"? In the same memorandum that we have been referring to it states that this new definition for "public official" in the undercover guidelines is only for the purposes of the undercover guidelines, and the definition previously given for purposes of the criminal investigation guidelines will remain in effect. So, what we have are two sets of guidelines being reviewed by the Senate using the same term, "public official", with the FBI internally giving different definitions for that phrase.

Mr. REVELL. I think you have to understand the reason for mentioning public officials in the undercover guidelines. It was for the purpose of insuring a review by a specific committee as opposed to requiring approval through a hierarchy or chain of command. We are still talking about undercover operations. We are talking about an approval process and whether a proposal should go through a particular committee because of certain sensitive issues. There are ambiguities and there are certain conflicts in definition between various program directives. We realize that. We know that is part of the problem in [55] having over 200 separate areas of investigative jurisdiction and over 13 major investigative programs. We do have some degree of conflict in our definitional process. That is in part a result of these guidelines all being issued virtually simultaneously at the change of an administraiton. There was a tremendous amount of time required for other matters, including numerous major investigations. The review process and the focusing on some of these ambiguities have taken more time than perhaps we would like but, I think, it is understandable.

So, we acknowledge that there are some ambiguities, but we believe that the policies and procedures are certainly clear to those who are involved in them.

Mr. **Wheeler**. Is there any reason, Mr. Revell, why, when the internal FBI people who are responsible for these definitions viewed the new definitions as changes or revisions, is there any reason why the FBI guidelines cannot be or should not be amended so that the public and the Congress are aware of those revisions?

Mr. **Revell**. First, Mr. Wheeler, these are not FBI guidelines; they are Attorney General guidelines, and we did notify the Department of Justice and the Attorney General of our operational definitions. Any notificaiton to the Congress or [56] to the public would, of course, be the prerogative of the Department of Justice and the Attorney General.

Mr. **Wheeler**. Mr. Revell, what is an undercover operation? I think we ought to start basic.

Mr. **Revell**. An undercover operation is a series of related activities undertaken by an agent or employee of the Federal Bureau of Investigation or another law enforcement officer working for or in conjunction with the Federal Bureau of Investigation during which true identity is not disclosed.

Mr. **Wheeler**. That long definitional part at the end there, is that what you would normally call an undercover agent or an undercover operative?

Mr. **Revell**. That is correct.

Mr. **Wheeler**. What is the difference between an undercover agent and an informant and a middleman, since we are going to be using those terms a lot in the next couple of months?

Mr. **Revell**. An agent is an employee of the FBI or another cooperating law enforcement agency. He or she is also at times called an undercover operative.

An informant is an individual who has requested confidentiality, who is providing information to the FBI under the provisions of the informant guidelines, and who we do not expect will testify at a later date.

[57] The middleman, or the corrupt influence peddler, is a subject of the case. He does not know that he is dealing with the FBI. He believes that he is dealing with other criminal entities. He is not under the control or direction of the FBI but is part of the criminal conspiracy the FBI is investigating. The middleman, the corrupt influence peddler, is the nexus between the public official, who will or is alleged to be willing to sell his office or to take bribes, and those who are willing to pay those bribes for illegal purposes. The middleman or corrupt influence peddler in a narcotics case would be the person who brought the seller and the buyer together. He would not know that the buyer is an undercover agent of the FBI or DEA or a police officer, or that the activities are being scrutinized and subject to investigation by the agency involved. He believes all the parties are involved in ongoing criminal activities.

Mr. **Wheeler**. For purposes of an example—the one at hand, obviously, is Abscam—am I correct that the only informant in Abscam was Mel Weinberg, and the other individuals, whose names we will hear, such as Howard Criden, are middlemen?

Mr. **Revell**. Weinberg transcended the role of informant to cooperative witness or cooperative individual. He was an **[58]** informant at the beginning of the operation. Once it was determined that he in fact would testify, he became a cooperative witness or a cooperative individual who was, of course, operating under his true name; but his involvement with the FBI was maintained confidentially and in a covert fashion.

Mr. **Wheeler**. Do I understand you correctly that the sole differnce between an informant and a cooperating individual is that the latter is a person who testifies?

Mr. **Revell**. An informant must be approved under the informant guidelines. There are certain qualifiers, certain suitability requirements, and so forth. That is not necessarily true of a cooperating individual. However, an informant can become a cooperating individual by agreeing to testify, at which time we expect to reveal his identity in the course of the prosecution.

Obviously, if he is going to testify, then the need for the protection of his identity is no longer valid.

Mr. **Wheeler**. Let me ask again. Is it the case that every single person who is referred to as a cooperating individual is a person who will testify? Is that what you mean by cooperating individual?

Mr. **Revell**. Our expectation is that they will testify, subject to the prosecutor's determination.

Mr. **Wheeler**. You said in your opening statement, Mr. Revell, that undercover operations proposals by and large **[59]** originate in the field. Who in particular devises the undercover operation in the first instance?

Mr. **Revell**. Generally it is the agents directly involved in investigations, particularly within their particular area of expertise: white-collar crime, organized crime, general property crimes. They will detect situations which they believe would be best scrutinized by an undercover operation, and they will discuss it with their supervisory agents. If they receive encouragement at that level, they will put together a proposal which will go through the chain of command in the field office, through the principal legal adviser or legal adviser in the office, to the agent in charge. They will also consult with and receive the counsel and guidance of the strike force attorney or the U.S. attorney. There is, therefore, an ongoing deliberative process within the field office chain of command as to the viability and possibility of conducting an operation against certain types of activities.

Mr. **Wheeler**. Is that true of all undercover operations, that chain of command that you have just described? Is it true no matter how small the undercover operation is going to be?

Mr. **Revell**. No. It may be conceived by anyone who is involved in the investigative process. As the agent in charge, I conceived an undercover operation when I was in Oklahoma, put together the team to do it, and then called upon the resources of that office to fill out my intention. It can **[60]** be conceived by the agent in charge, the assistant agent in charge, a supervisory agent, or a group of agents. There is no requirement that any one level or person conceive of the undercover proposal. There are specific requirements as to the approval process, as you know.

Mr. **Wheeler**. Once it is conceived, it then has to go through an approval process.

Mr. **Revell**. That is correct.

Mr. **Wheeler**. That approval process differs for different kinds of undercover operations?

Mr. **Revell**. Only on two cases. We have what are called the group 1 and group 2 undercover operations. Group 2 operations can be approved at the field level by the special agent in charge with the concurrence of the U.S. attorney or the strike force attorney in that area. The group 1's, the major, long-term, sophisticated and/or sensitive undercover operations, must be approved at FBI Headquarters after review by substantive section, and our Undercover Review Committee. Eventually they must be approved by either me or the Director, depending on the type of case.

Mr. **Wheeler**. At least as to some undercover operations, those that involve sensitive circumstances, the approval process begins in the field with the special agent in charge, goes to FBI Headquarters, then goes to the Undercover [61] Operations Review Committee, and then goes to either you or the Director. Is that right?

Mr. **Revell**. It goes to me and then it may go to the Director.

Mr. **Wheeler**. Maybe you should identify some of the sensitive circumstances that would kick into play this more elaborate approval process.

Mr. **Revell**. They, of course, are set forth in sections A and B of the guidelines. There essentially are 7 fiscal circumstances and 12 sensitive circumstances. Do you want to talk about the fiscal or the sensitive?

Mr. **Wheeler**. The sensitive.

Mr. **Revell**. That would be under section B of the guidelines. They are subject to an emergency authorization provision in the guidelines which gives some flexibility in those cases of serious danger to life or other types of serious crime. Normal procedures could be short-cut on a limited time basis, subject to later approval.

The first is that the undercover operation will concern an investigation of possible corrupt actions by a public official of public candidate, the activities of a foreign government, the activities of a religious or political organization, or the activities of the news media.

Second is that the undercover operation will involve an untrue representation by an undercover employee or cooperating [62] private individual concerning the activities or involvement of any innocent person.

Third, the undercover employee or coperating private individual will engage in any activity that is proscribed by Federal, State, or local law as a felony or that is otherwise a serious crime except this shall not include criminal liability for the purchase of stolen or contraband goods or for the making of a false representation to third parties in concealment of personal identity or true ownership of a propriety.

There are 12 of these. Do you want me to keep going?

Mr. **Wheeler**. No. I think that is enough just to give an indication of what we mean by sensitive circumstances.

Let me ask you about a couple of those, Mr. Revell. There is one that says it is a sensitive circumstance if there is a significant risk of violence or financial loss to innocent persons. Right?

Mr. REVELL. Correct.

Mr. WHEELER. Does that mean that undercover operations will be approved, can be approved by the committee and by you even if you know that there is a substantial risk of physical violence and harm to innocent individuals?

Mr. REVELL. Any significant risk of violence must be approved by the Director. In any law enforcement activity there is some risk. If a law enforcement officer goes out to [63] make an arrest on the street, there is some risk to bystanders. In the conduct of a surveillance or any other activity, there is some risk. So, we are not talking about a black and white situation. You are talking about gradations of risk. It is the responsibility of each person in the approval process to assess those risks, to evaluate the potential for those risks, and then to make a recommendation as to whether the proposal should proceed or not. Of course, the Undercover Review Committee in particular assesses those risks and makes its recommendations to me and to the Director.

Mr. WHEELER. Is there any procedure, either within the FBI or, to your knowledge, within the Department of Justice or any other part of the executive branch, to provide in advance to compensate innocent people who are harmed by undercover activities that you know in advance are likely to involve such harm?

Mr. REVELL. Any person can bring suit against the Government for any wrongful acts on the part of the Government. Individuals under the *Bivens* case can bring actions against individual employees or agents. There is the Federal Tort Claims Act. So, there are remedies available. The Government, before suit, could settle legitimate claims of innocent persons.

Mr. WHEELER. Well, other than judicial remedies, though, is there any provision within the FBI or within the Department [64] of Justice to provide for the FBI to indemnify individuals for damages the FBI actually anticipated might occur? Or do you require citizens to go though the judicial process in order to obtain relief?

Mr. REVELL. Not necessarily through the judicial process, through the claims process. We do not have authority to have indemnification because of the Antideficiency Act. That is one of the areas in which we are asking for some legislative action. But those would primarily be cooperating individuals. We do not have special provisions that would guarantee no financial harm. And, of course, you cannot ever anticipate in law enforcement that you are not going to have risk to anyone, including the law enforcement officer. What we try and do is balance the level of risk, the threat assessment, against the priority of the investigation, the urgency of the investigation, and the objective to be accomplished.

I know of no case in which we went forward after we determined that there was a high risk of physical violence. I cannot say that we do not go forward in cases where there is a risk, obviously. Otherwise, we would carry out no law enforcement functions, by and large.

Mr. WHEELER. Have there been any instances that you are aware of where the—as you said, the Director must approve all of these instances in which there is a substantial risk of physical harm. Do you know of instances in which the [65] Director's approval was sought?

Mr. **Revell**. I do not recall a case occurring since adoption of the guidelines in which the Assistant Director of the Criminal Investigation Division or the committee has recommended to the Director any undercover operation in which it was determined that there was a significant risk of violence.

Mr. **Wheeler**. Mr. Revell, when we have a sensitive circumstance involved, so that the more elaborate approval process is required, am I correct that the approval process begins with a formal written proposal prepared and submitted by the special agent in charge of the field office where the activity is being proposed?

Mr. **Revell**. Except under the emergency authorization provisions, that is correct.

Mr. **Wheeler**. All right. I would like now to deal for several minutes with that formal proposal. The proposal is the document that is reviewed by Headquarters and by the Undercover Operations Review Committee and by you and ultimately in some instances by the Director. Is that right?

Mr. **Revell**. That is correct.

Mr. **Wheeler**. So, the information that you have at your disposal and that the committee has at its disposal really lies in that document.

Mr. **Revell**. That and any information that is gathered [66] through the approval process at Headquarters and from the U.S. Attorney.

Mr. **Wheeler**. OK. Now, as I understand the guidelines—and I would like you to confirm that this is the case—that written proposal must contain several different types of information, including the following: the particular—and that is the word that it uses—the particular cover to be used; a description of any informant to be used; the particular offense or crime to be investigated; any individuals known to be the subject of investigation; the projected duration of the investigation; a description of how the criminal investigation guidelines are going to be met; a description of how the informant guidelines are going to be met; a description of how the question will be structured so as to cause minimal intrusion consistent with the need to collect the evidence or information in a timely and effective manner; and a description of what sensitive circumstances exist or are likely to arise and why they are justified.

Those are all factors that must appear in the document.

Mr. **Revell**. Correct.

Mr. **Wheeler**. I take it the reason that all of these factors are required to be considered in the proposal is because they should affect whether or not the FBI Headquarters and the Undercover Operations Review Committee and you and ultimately the Director approve a particular undercover [67] operation. Is that right?

Mr. **Revell**. That is correct.

Mr. **Wheeler**. I want to ask you some questions about a few of those factors. But I first want to focus on the fact that the written application that has to be submitted, as referred to in the guidelines, must be submitted for, and I quote: "the establishment, extension or renewal of an undercover operation involving sensitive circumstances." The word establishment seems self-evident, the creation of a new operation. But what does extension mean?

Mr. **Revell**. Extension and renewal are virtually synonymous. However, an extension would generally be for less than a full renewal period, which would be 6 months. So, we would use extension of a limited duration and renewal for a full 6-month period.

Mr. **Wheeler**. So, the word extension and the word renewal both simply go to extending the time of an existing undercover operation?

Mr. **Revell**. That is correct.

Mr. **Wheeler**. As I understand from our discussions before today, the word that you use within the FBI to refer to other kinds of changes of an existing operation is expansion. Is that right?

Mr. **Revell**. I may have used that term, but the term that is generally used for a change in investigative direction is a [68] change in investigative direction. So, under the context of changing the thrust and direction of an undercover operation, that would be the expansion connotation. In essence that is what it means if investigating narcotics leads into public corruption, that would be a significant change in investigative direction and would require a review and a reconsideration of the proposal, except under certain circumstances for a limited, one-time type basis.

Mr. **Wheeler**. Here is one of the concerns, Mr. Revell. The guidelines are very specific in terms of what they require for the initial approval of an undercover operation, as we have just described. They require a number of types of information in great detail, including identification of individuals, and so forth. But there is nothing in the guidelines, at least on their face, that requires that a new written proposal and the full approval process be required if a new cover is used, for example; there is nothing that requires a new proposal, a new approval, if a new informant is used. Is that right?

Mr. **Revell**. That is correct.

Mr. **Wheeler**. And there is nothing that requires a new approval process if new crimes are investigated.

Mr. **Revell**. Well, an undercover operation is not generally targeted at one specific crime. It is targeted at a series of related criminal activities within certain [69] geographical areas. So, the operation is never targeted at the solution, or virtually never targeted at the solution, of one crime that has already been committed or is expected to be committed.

Mr. **Wheeler**. But, again, the guidelines require that in the initial approval process the application must state the particular—and I am quoting—the particular offense or crime to be investigated. That requires this elaborate approval process. As I understand what you are saying, suppose that an undercover operation is approved through this elaborate process for an investigation of securities fraud, let us say, in New York. And the agents who are participating then decide that they want to investigate political corruption in Florida and South Carolina. Where is there anything in the guidelines that requires them to submit a new application, go through the full approval process for that dramatic change in the focus of the operation?

Mr. **Revell**. That is what I just described as a significant change in direction. The proposed change would have to go through the approval process, not to establish those same factors that have already been established, but to determine the basis for the change in direction. That would include all available information indicating there was activity this particular undercover operation should pursue, and all of the conditions indicating whether or not there should be a change in direction. It would [70] go through the same approval process, the Undercover Review Committee, the substantive section, and me in that approval process.

Mr. **Wheeler**. Are you saying that, if there were such a change in the thrust, that the entire process, a new application would be prepared by the SAC? It would be forwarded to FBI Headquarters, which would then send it up to the Undercover Operations Review Committee, which would then send it up to you, just as it would have occurred had it been a new operation?

Mr. **Revell**. If it is deemed to be a significant change in investigative direction, yes.

Mr. **Wheeler**. Who deems it?

Mr. **Revell**. Several people: the agent in charge because of the guidelines requirements or any of the people who are reviewing the cases at headquarters. These program managers can at any time require an undercover operation which may change in thrust or direction be submitted to the committee for approval.

Mr. **Wheeler**. Which is the guideline that sets forth that requirement for a change in thrust?

Mr. **Revell**. Paragraph M is the general area which sets forth that under previously unforeseen circumstances.

Mr. **Ricks**. That does not specifically address itself, though, to a change of investigative direction. If it involves other than sensitive circumstances, that is understood.

[71] Mr. **Wheeler**. That is exactly my question, as a matter of fact. Paragraph M really deals only with a situation in which you have new unforeseen sensitive circumstances.

Mr. **Revell**. Correct.

Mr. **Wheeler**. But, if you do not have those and you could have a dramatic change in the thrust of the operation, and nothing in the guidelines appears to require resubmission for approval.

Mr. **Revell**. Of course, the guidelines are only part of our investigative policy. We have a great deal more policy direction than is contained in the guidelines. The guidelines were never meant to be fully inclusive of our investigative control and direction. So, what I have described to you is the existing practice and Bureau policy irrespective of the fact that it is not covered specifically in the guidelines.

Mr. **Wheeler**. Is that policy set forth in any other FBI document that the committee should have?

Mr. **Revell**. I believe that probably the committee does have it.

Mr. **Ricks**. The directions sent to a field office when an application is approved direct that field office to insure that, if there is a change in investigative direction, it has to be notified; and perhaps a modification would have to be made in the proposal.

Mr. **Wheeler**. Would it be the case under that guideline—[72] well, I guess it is not a guideline—under that internal FBI document, would it be the case that, if an undercover operation that began as an investigation of securities fraud in the Northeast and the SAC wanted to begin to investigate political corruption in South Carolina or Florida, that that would be such a change in thrust?

Mr. **Revell**. Of course. Also, the SAC in New York cannot open or conduct investigations in South Carolina or Florida without Headquarters' concurrence and approval. So, he is restricted to the geographic territory under his particular jurisdiction.

Mr. **Wheeler**. Would it be a change in thrust sufficient to require this new approval process if an operation that began to investigate securities fraud in New York began to investigate political corruption in New York?

Mr. **Revell**. Yes.

Mr. **Wheeler**. Even if the political corruption being investigated did not involve the so-called high-level figure that your modification describes?

Mr. **Revell**. If a Group 1 undercover operation was being changed, then it would either have to be submitted to the committee or the SAC could then create, if the level of official corruption permitted, a Group 2 operation under his authority. But it would have to be separated from the approved Group 1 operation.

[73] Mr. **Wheeler**. Let me give you a specific hypothetical, Mr. Revell. Suppose that the FBI creates an undercover operation, a fencing operation in Detroit. Suppose that during the course of running that operation one of the corrupt individuals who is dealing with the organization, not knowing that it is an FBI front, says that you have to pay protection to the local police chief. What under these guidelines will the FBI agents do?

Mr. **Revell**. They would submit that information to Headquarters, where a determination would be made whether they could proceed with that particular singular incident under the guidelines for bribery of a public official.

Mr. **Wheeler**. But only under the guidelines for bribery and not under the undercover guidelines?

Mr. **Revell**. Unless it appeared to be a repetitive practice and the thrust and guidance of the operation would be in that area in the future, not on a single instance or isolated circumstance.

Mr. **Wheeler**. The issue that we have been talking about with respect to the undercover guidelines applies as well, I think, to the criminal investigation guidelines. Paragraph c says a criminal investigation may be initiated only if—and I quote—facts or circumstances reasonably indicate that a Federal crime has been, is being, or will be committed, and there must be specific facts, and a mere hunch is insufficient. [74] But, again, once an investigation is opened, under the Criminal Investigation Guidelines, is not it the case that the investigation can then expand in any direction? There is nothing in the Criminal Investigation Guidelines that deals with expansion.

Mr. **Revell**. An investigation may follow the course of criminal conduct. If that conduct is not connected to the ongoing investigation, then our other supervisory regulations would require the opening of a separate case in which the same test would apply. An agent does not have authority to simply disband a case or take it in any direction. All communications that the agent submits to other offices must be approved by an agent's supervisor. The incoming communication to a new office is reviewed by another agent supervisor before a case is opened in that office. So, there are supervisory levels of approval to insure that the case does not expand beyond the limitations of a particular investigative thrust or area. Second, if there is a change in the character of that case, that must be done through a formal communication which sets forth an added character or potential violation to the case. That again is subject to the approval of a supervisory agent.

Mr. WHEELER. Is there any reason why the policies that you have been describing with respect to changes in the thrust of an undercover operation under either the Undercover [75] Guidelines or Criminal Investigation Guidelines cannot be incorporated into both of those sets of guidelines so that that is made explicit on the record?

Mr. REVELL. I think the purpose of guidelines is give general guidance and not specific detail. Certainly, I know that was the intention of Attorney General Civiletti in our meetings. He did not think that it was either necessary or appropriate to try and set forth in detail in an Attorney General guideline how the FBI or any other investigative agency should conduct its business. He tried to give broad parameters within which they should operate and to do so in a manner which is consistent with the existing regulations and, of course, the law.

Mr. WHEELER. But Attorney General Civiletti also said when he introduced these guidelines that they should give the public a firm assurance that the FBI is acting properly. If you have guidelines that at least on their face permit the FBI to open an investigation for one specified particular purpose, as required, and then on their face allow the FBI to go off in virtually any direction without a further approval process, do you not think that the public requires some assurance that that is not going to be done?

Mr. REVELL. No, I do not. I just told you that we can open a case on the basis of an allegation. That is done by a supervisory agent. An agent cannot turn around and open a case [76] without that supervisory authority. The same guidelines, the same regulations and requirements for changing the substance of a case are in place as for opening a new case. I certainly do not think that the American public wants to sit and read volumes of material on the mechanics and minutiae involved in opening of criminal investigations. I think they are interested in the areas of principal guidance that must be met in order for us to carry out our investigative mandate, and I think that is what the guidelines were created for and what by and large they do.

Mr. WHEELER. Let us go back to some of the factors that you articulated that are required to be considered during the approval process all the way up the line. One of these is that any informant to be used must be shown to have satisfied the Informant Guidelines. Is that correct?

Mr. REVELL. That is correct.

Mr. WHEELER. In paragraph D, it requires that any informant be found—I am talking now about paragraph D of the Informant

Guidelines—suitable for the particular proposed use. Does the FBI Headquarters review the field office's determination of suitability?

Mr. **Revell**. Yes.

Mr. **Wheeler**. Does the Undercover Operations Review Committee review that as well?

Mr. **Revell**. No.

[77] Mr. **Wheeler**. Do you when these get up to you?

Mr. **Revell**. No.

Mr. **Wheeler**. Paragraph D(3) of the Informant Guidelines lists eight factors that have to be considered. One of these is paragraph D(3)(b), the seriousness of past and contemporaneous criminal activity. Another one is D(3)(e), reliability and truthfulness. Another one is the ability of the FBI to monitor and control their proposed informant.

Mr. **Revell**. Let us go back to reliability and truthfulness. There is another provision of that paragraph which says acertainable by other means.

Mr. **Wheeler**. All right. Under these provisions, Mr. Revell, if an informant was used by the FBI in the past and was terminated by the FBI because the FBI found that this informant was operating a scam on the side while he was supposed to be an informant for the FBI, could that person nevertheless be used again as an FBI informant?

Mr. **Revell**. Yes, they could under certain controls and certain circumstances.

Mr. **Wheeler**. What would those be? Would you give us an example?

Mr. **Revell**. That the information the individual would be providing would be subject to confirmation and/or reliability tests beyond simply the word of the informant.

[78] Mr. **Wheeler**. And that would be a requirement that you would establish before the operation would even be approved, using that particular informant?

Mr. **Revell**. If the informant had proved to be unreliable in the past, then we would have to have certain constraints and safeguards to insure that we were not depending upon the informant's word solely. As long as we were able to ascertain the reliability of the information through other means, then, yes, we could use him if that informant had access to the particular area of investigative activity that we were interested in, and if we concluded with reasonable certainty that we could at this point control his activities through other means.

Mr. **Wheeler**. So, with an informant who had that type of a history and the FBI knew about that history, you would impose special safeguards on the informant?

Mr. **Revell**. Certainly.

Mr. **Wheeler**. Would you be willing to use such an informant even in one of the cases involving sensitive circumstances?

Mr. **Revell**. Yes.

Mr. **Wheeler**. Would you impose even further safeguards given that kind of a situation?

Mr. **Revell**. Yes. Anything that we obtain must undergo the scrutiny of a court test. It does us [79] no good to gather information if we cannot introduce that information in court. We know it is going to be subjected, particularly an informant's information, to extreme scrutiny by defense counsel and, by the court during hearings on entrapment and due process. We have to satisfy ourselves that we are going to be able to stand those tests before we utilize that informant and to make sure that we can corroborate the information he provides so we can withstand those tests.

Mr. **Wheeler**. Was the policy that you just described as existing under today's guidelines in operation in 1978?

Mr. **Revell**. As far as informants?

Mr. **Wheeler**. Yes.

Mr. **Revell**. They had to be authorized by headquarters. There were certain checks upon their reliability. There had to be certain constraints. All of the provisions that you just read off were, of course, not in existence because they came into existence when the guidelines were issued.

Mr. **Wheeler**. The original Informant Guidelines, of course, were promulgated in 1976.

Mr. **Revell**. Correct.

Mr. **Wheeler**. So, some of these were in effect in 1978?

Mr. **Revell**. Correct.

Mr. **Wheeler**. Paragraph M of the Informant Guidelines provides that there can be reasonable compensation for an [80] informant. Who sets the compensation for an informant within the FBI?

Mr. **Revell**. The person at the final level of approval sets it, although it is an ongoing process. It is a mater of negotiation between the informant's case agent and the supervisor, with input from all those involved, as to the appropriate level of compensation, the type of case, the stakes involved in the case, the risk to the informant, the amount of time that the informant has had to spend on the case, whether he has been deprived of being able to make a living in other ways, and so forth. So, there is no set formula. It is a mix of factors and circumstances that exist within the particular case. Then the approval levels would depend upon the level of payment authorized.

Mr. **Wheeler**. What is the lowest level of approval?

Mr. **Revell**. Do you mean as far as the payment of an informant?

Mr. **Wheeler**. Yes.

Mr. **Revell**. The unit chief of the informant unit at headquarters, although an SAC has certain informant authority. He can approve some payments subject to review at headquarters. An SAC is a higher level official than a unit chief. The closest level of approval is the agent in charge of the particular field office. The lowest level of headquarters approval is the unit chief of the [81] informant unit.

Mr. **Wheeler**. Are there instances in which the compensation for the informant has to be approved by the Director?

Mr. **Revell**. Yes.

Mr. **Wheeler**. How high a level is that?

Mr. **Revell**. We have internal guidelines on the amount of payment. Payments in excess of $25,000 go to the Attorney General, not for approval but for notification purposes.

Mr. **Wheeler**. Describe the structure of the compensation. Can it be, for example, on a percentage basis of the property recovered?

Mr. **Revell.** No. The amount of property recovered, its value, would be a consideration, but it would not be totally based on that. It would also depend upon the amount of time the informant had spent and the danger to him, and so forth. I cannot say that any one factor is going to control because they are all considered in the decision as to what recommendation is made and, finally, as to the amount paid. So, there are a number of factors that are considered.

Mr. **Wheeler.** But, once you take all those factors into account, is the compensation paid to an informant ever established as a percentage of the recoveries by the FBI?

Mr. **Revell.** No.

Mr. **Wheeler.** Is it ever established on the basis of the [82] number of convictions of criminals as a result of the operation?

Mr. **Revell.** No.

Mr. **Wheeler.** Is it ever established on the basis of the number of persons brought in for prosecution?

Mr. **Revell.** No.

Mr. **Wheeler.** Are bonuses ever paid to informants?

Mr. **Revell.** Lump-sum payments are paid; yes.

Mr. **Wheeler.** And sometimes they are paid regularly, as in a monthly payment during the course of the operation?

Mr. **Revell.** Sometimes, and in certain instances both.

Mr. **Wheeler.** When you pay bonuses, that is something over and above the originally agreed-upon regular payments, how do you determine whether or not to pay such a lump sum?

Mr. **Revell.** We go through the same factors that we have talked about. Many times the monthly payments will simply be the costs and expenses for maintaining the informant in his daily activities. The results of his work will be covered by the lump sum. We consider how effective he has been in carrying out his responsibilities, how much he has had to extend himself into dangerous, hazardous situations, how much stress he has been under, how much inconvenience, and so forth. All these factors would have to be considered before a lump sum would be involved.

Mr. **Wheeler.** Would it be based upon in any instance the [83] level of the officials, for example, who were bribed, who accepted bribes?

Mr. **Revell.** The level of the officials?

Mr. **Wheeler.** Yes.

Mr. **Revell.** No.

Mr. **Wheeler.** In other words, the fact that a Congressman accepts a bribe as opposed to a mayor would not result in a higher bonus?

Mr. **Revell.** No.

Now, the dangerousness of an individual or his place in the hierarchy of a criminal organization would certainly be a factor, but not the level of public official, unless we are talking about how long it took the process to reach that level through many intermediary steps. That is not a function of the position but of the process.

Mr. **Wheeler.** When you decide to pay bonuses on the results of the operation, Mr. Revell, are the bonuses paid before or after the trials of the persons who were brought in?

Mr. **Revell**. They have been in both. Primarily, an informant will be paid before trial. But, if there is a continuing trial process or a series or trials and/or a series of other activities such as grand jury and discovery hearings and so forth, then a determination would have to be made at that point as to what the informant was entitled to in order to maintain his services to the Government.

[84] Mr. **Wheeler**. That would warrant some extension of the regular payment such as the monthly salary, but would it also warrant a lump-sum payment at the end of the convictions?

Mr. **Revell**. As the investigation progresses and as prosecutions are undertaken, there may be an evaluation of the particular activities of the informant that might require payment of a lump sum at that time. Each one stands on its own, is documented, is justified, is scrutinized, and is paid when requested and authorized.

Mr. **Wheeler**. How do you get the informants? Where do they come from?

Mr. **Revell**. Some are volunteers. Some walk in any say: I'm tried of a particular situation. Some have been extorted and are tried of being extored. Others are individuals who have access to information, and when we contact them they agree to cooperate with us for altruistic purposes. Others, of course, are criminals involved in the criminal justice process who are looking for favorable consideration. Others are looking for some form of protection from perhaps competing elements within criminal cartels. There is a myriad of reasons why an individual would agree to cooperate. Some are totally altruistic. Some are for purely selfish purposes.

Mr. **Wheeler**. When you take an informant who is seeking a lighter sentence or probation or basically to get out from under, is that a consideration that necessarily leads you to [85] conclude in the first instance that he is going to be less reliable than one of the informants who comes forward out of some feeling of public service?

Mr. **Revell**. Not necessarily, although, obviously, if a person has been convicted of a criminal offense, you have to look at that as a factor; and that would be a factor. On the other hand, you can have somebody come forward and offer to work with you who can turn out to be entirely unreliable. You can have a convicted criminal who can prove to be extremely reliable. So, I do not think you can make a flat statement that that would be a controlling factor. It is a factor you must consider.

Mr. **Wheeler**. You said that you have to consider whether he is a convicted criminal. Would the type of crime make any difference?

Mr. **Revell**. Of course.

Mr. **Wheeler**. Which would be the kind that would make him less reliable in the FBI's view?

Mr. **Revell**. If you have somebody who has been convicted of perjury, then you have to consider the fact that the individual is a proven liar. Certainly, an individual who has been involved in confidence games and confidence schemes has made a living by the guile of his demeanor and his responses, and you have to be concerned that you are able to observe and control those [86] activities.

Mr. Wheeler, it is impossible for me to sit here and go through a litany of all the circumstances. It depends upon the investigative experience and expertise of the agents, the supervisors, and the people in the criminal investigative process to make these determinations on a multitude of factors, any one of which can be a very significant factor or simply another factor among many others.

Mr. WHEELER. But, in any event, the informant does have to be found through the approval process to be suitable for the particular operation proposed?

Mr. REVELL. Correct.

Mr. WHEELER. Paragraph D(7) requires that he be terminated if the FBI learns that the informant is no longer suitable. Is that right?

Mr. REVELL. If he is determined to be unsuitable, yes. We can conduct a review of suitability without determinating unsuitability.

Mr. WHEELER. What level of proof do you use internally to determine whether or not an informant has become unsuitable during the course of an existing operation?

Mr. REVELL. The same level of proof that we would to determine he was originally suitable.

Mr. WHEELER. What is that?

[87] Mr. REVELL. Those who are experienced in these matters, knowing the rules, regulations, and requirements, make a determination which is reduced to writing with an articulable basis for the finding.

Mr. WHEELER. If you have some evidence but, let us say, not a preponderance of the evidence, but you have some reasonable belief that an informant who has been working for you in an operation is not recording conversations that he has been directed to record, what would you do?

Mr. REVELL. We would find out from him why. If the reason was understandable and legitimate under the circumstances, we would probably give him redirection and send him back to do what he was instructed to do.

Mr. WHEELER. And if he continued not to record conversations?

Mr. REVELL. If an individual continuously refuses to accept direction, then that obviously becomes a very significant factor in his suitability to continue as an informant.

Mr. WHEELER. Can you say that there comes a time when you can articulate a rule that, when the informant on multiple occasions, whatever the number is, continues to refuse to follow the instructions given to him by the FBI that he will be terminated?

Mr. REVELL. Refuse to follow?

[88] Mr. WHEELER. That is right.

Mr. REVELL. We are dealing with matters that I did not believe we were going to discuss. That is a subjective term that is not demonstrable by the facts. If we had an informant who refused to follow instructions, we would take action to terminate his service. I do not at any point concede that there are cases under discussion at this time in which that occurred.

Mr. WHEELER. If you had some evidence but again not necessarily a preponderance of the evidence, let us say you had a reasonable belief or reason to believe, using the terminology that appears in the guidelines, that an informant may be sharing in bribe money or in contraband such as a portion of a drug sale, would you terminate him?

Mr. **Revell**. No. We would conduct an inquiry to determine if those were the facts. If we determined that they were the facts, then we would find out why. There might be legitimate reasons: maintenance of cover, protection of the safety of the informant or his family, and so forth. We would, again, ascertain the total facts and make an independent judgment at that point. Again, just because there were certain inferences or allegations would not necessarily mean that they were factual or correct.

Mr. **Wheeler**. But can there come a time, Mr. Revell, when, even if you cannot establish to the satisfaction of a [89] preponderance of the evidence, that the informant has been, in fact, engaged in this kind of activity, that you nevertheless should terminate him because of the sensitive circumstances involved in the operation?

Mr. **Revell**. You have to consider many things in terminating an informant, including his continuing worth to an ongoing investigation, even though you may not be using him in a specific role. Also, if you terminate an informant, you may have much less control over what that individual would do on the outside during the course of a continuing covert investigation. So, there may be many factors involved in whether or not you would terminate or simply redirect the activities of an individual during the course of a covert operation.

Mr. **Wheeler**. Well, what can you do and what do you do to control one of these informants, especially if you have reason to believe that he may be engaging in this kind of conduct?

Mr. **Revell**. You have continuing contact with the informant by either the undercover agents or with case agents. You continue to give directions. Of course, you have certain financial and other types of incentives as well as the threat of prosecution if he violates the law. So, you have certain positive and negative sanctions that are available to you to control and constrain that activity.

Mr. **Wheeler**. Other than sanctions and inducements, are there any mechanisms that you use to try to control and monitor [90] the informants?

Mr. **Revell**. You give specific instructions and directions. You involve them in the ongoing scenario planning process so they understand their role. There are a multitude of situations that you could address as to the proper role and the proper context for the informant's involvement. It is a matter of his understanding his role as well as understanding the goals and objectives of the operation.

Mr. **Wheeler**. I believe that the Director testified, again before the Edwards Committee, that it would be extraordinary for the FBI to be able to monitor an informant 50 percent of the time. Do you agree with that?

Mr. **Revell**. Unless it was under very specific circumstances in which an undercover agent and an informant, in essence, were virtually living together, I would say 50 percent of the time would be an extraordinary amount of time.

Mr. **Wheeler**. So, for 50 percent of the time you are relying solely on the sanctions and the inducements to control the informant?

Mr. REVELL. Well, obviously, we do not keep every informant under surveillance. That would not be either desirable or possible.

Mr. WHEELER. Do you have a policy with respect to whether informants should record all material conversations that they have in the course of an operation?

[91] Mr. REVELL. Material conversations, yes.

Mr. WHEELER. Do you have——

Mr. REVELL. If they have been given such instructions to record conversations. In many instances, if an informant is not involved, for instance, in a covert operation, the informant will be required to report to his handling agent. The informant's information will be recorded on a document known as an FD 302. But, if the informant has been, during the course of a covert operation, instructed to record pertinent conversations, then we expect him to do so.

Mr. WHEELER. Is it FBI policy that every material conversation engaged in by an informant during the course of an operation must be either recorded or memorialized in an FD 302?

Mr. REVELL. Every material conversation, yes.

Mr. WHEELER. How long has that policy been in effect?

Mr. REVELL. As far as a material conversation, it has been a requirement for both agents and informants for many years. Any material conversation that can be subject to testimony must be reduced to either a written document or, recorded by other means such as audio or video recordings if they are available.

Mr. WHEELER. In addition to considering the informant guidelines, headquarters and the Undercover Operation Review Committee and you are required under the undercover guidelines to consider and carefully assess several potential costs, [92] including risk of harm to private individuals, risk of financial loss to private individuals, risk of harm to reputation, risk of invasion of privacy, and a risk of conduct that may approach entrapment. Do you recall those factors?

Mr. REVELL. Yes.

Mr. WHEELER. How many of those risks must exist to cause a proposal to be rejected?

Mr. REVELL. Any one could cause rejection or any combination if they were significant. A proposal could be rejected if there was deemed to be a significant risk or if that risk was not balanced against a greater need in the investigation based upon the level of the investigation, the importance of the investigation, the stakes involved.

Mr. WHEELER. Do you ever approve undercover operations even when all five of those risks are present and are memorialized in the application?

Mr. REVELL. I have never known of such a situation to have occurred, in my knowledge.

Mr. WHEELER. What does the FBI do when some of those risks actually materialize during the course of the operation? Suppose, for example, that private individuals, the FBI learns, are being defrauded of substantial sums of money during the course of an operation, innocent individuals. Now the risk is materialized. What does the FBI do?

Mr. REVELL. We try to minimize that risk [93] consistent with the nature of the investigation. We weigh the risk involved to the individuals within the operation and the risk of compromise, and make a judgment as to whether the investigation should be continued or discontinued. We consider whether the risk to individuals was greater than the benefit of the case or whether the benefit of the case was the overriding factor.

There is always some risk to individuals from persons not under our control or even from facts and circumstances somewhat under our control. You can never have total assurance that any action you take in a covert investigation will not have some adverse consequence. What we try and do is use reason and judgment to minimize those factors to the greatest extent possible.

Mr. **Wheeler**. In your opening statement, Mr. Revell, you said that the FBI recognizes that political corruption cases are inherently sensitive since they may result in damage to the reputation of public figures or institutions. You listed five factors. I would like you to tell me where these five factors are found. The five factors you articulated are a thorough review of such factors as the source of the allegation, the credibility and motivation of the source of the allegation, whether the source was in a position to know the information he furnished, whether independent information exists to corroborate the allegation, and whether the allegation would **[94]** constitute a violation of Federal law.

Mr. **Revell**. They are found in our regulations for public corruption cases. There is an amalgam with the investigative guidelines and other practices. Certainly, the investigative guidelines set forth the criteria for opening investigative operations. The guidelines also address the specificity of the information and the degree of validity that we can give to it.

The bribery guidelines are not specifically related to undercover operations. They may be, in fact, totally independent of any undercover operation.

Mr. **Wheeler**. Is it your position, Mr. Revell, that before what you call a public corruption investigation of an individual will be permitted that all of these factors must be found such as whether the source was in a position to know the information he furnished?

Mr. **Revell**. Before a bribe is paid all those factors will be satisfied.

Mr. **Wheeler**. Mr. Revell, I want to make sure I am clear on what you just said. Is it your testimony that before a bribe will be offered to an individual in a public corruption operation that the following five factors will be determined to exist: A thorough review of such factors as the source of the allegation; the credibility and motivation of the source of the allegation; whether the source was in a position to know the **[95]** information he furnished; whether independent information exists to corroborate the allegation; and whether the allegation would constitute a violation of Federal law?

Mr. **Revell**. Correct. Now, if you are talking about a separate series of events to establish these criteria, then, of course, you realize that we do receive information from people that they are being extorted for a bribe. We determine that the person is who he says he is, that he works for a particular company, and that indeed he is in a position that would perhaps make him vulnerable to a demand for a bribe. We then set up a scenario to cover the payment of that bribe. In fact, at the time that the approach is made by the public official or the intermediary, the scenario is so constructed to determine, one, that the individual knows that he is there for an illegal purpose, that he is soliciting a bribe, and that in fact the bribe is to be paid for his carrying out a criminal activity. Under those circumstances and up to the point of the payment of the bribe, we will have satisfied in one manner or another those factors that I just described. Yes, that is true.

Mr. WHEELER. Let me ask you some specific questions about that, Mr. Revell. Now we are talking about under the existing guidelines. Under the existing guidelines, as I understand what you are saying, before a bribe will be offered—let us take a hypothetical. Let us suppose that under the existing guidelines a corrupt middleman tells an FBI undercover agent **[96]** that a particular public official will accept a bribe. The five points that we have just reviewed include the statement that there will be an investigation, a thorough review whether the source was in a position to know the information he furnished. Are you saying that the FBI, upon being given a name of a possible corrupt official by a corrupt middleman, will in fact conduct a thorough review to determine whether that person, that corrupt middleman, was in a position to know the information that he furnished about that public official?

Mr. REVELL. As thorough a review as is available under the time constraints of the bribe situation. There will always be built-in safeguards to insure that, before any public official is paid a bribe, we know that he knows why he is there, we know that he intends to commit a criminal act, that he acknowledges the intent to commit a criminal act, and that he personally acknowledges or receives the money for that purpose. All of those would corroborate the information that the middleman has provided to us and would establish the credibility of the other factors. If those criteria are not met, then no bribe would be paid, even though the middleman or the corrupt influence peddler might have made those representations.

Mr. WHEELER. What you are saying, Mr. Revell, is that, once the individual, the public figure that we are talking about, is actually in the room, you have these factors as **[97]** back ups?

Mr. REVELL. They may be before he is in the room. They may have occurred several weeks or months before. In any event, they will be satisfied before any bribe payment is extended.

Mr. WHEELER. But what your testimony in your prepared statement says is that, in order to open this investigation of this individual, that you will, based upon a thorough review, determine the credibility and motivation of the source of the allegation, not once the individual appears in the room.

Mr. REVELL. You cannot subject a corrupt influence peddler to an open investigation as to his total credibility or reliability. He is involved in an ongoing criminal investigative enterprise. We will do what we can to ascertain all that we can about him. One of the proofs of his information is that he has done what he said he would do. If he has said that he has influence in political circles or official circles and he has in fact shown that he does, that goes to his credibility. Even though he does not know he is dealing with an FBI agent, he knows that he is dealing with an individual who can do him some good; and he does not in fact provide false or fictitious information. We can follow up on what he says to ascertain validity and truth. If it is not true, we have a [98] safeguard to insure that we do not go forward based simply on his allegations.

Mr. WHEELER. Let us take the other side of the coin, Mr. Revell. Suppose that that middleman, instead of having produced in the past, in fact told you that he would produce for you a corrupt politician who would in fact take a bribe in return for promising to perform a specific official act. When that individual was brought before the FBI cameras, that person in fact did not so agree and had never in fact been told that. And the corrupt middleman admitted that he had never so told that person. Would you from that point on refuse to rely on that corrupt middleman?

Mr. REVELL. I would be very suspicious of that corrupt middleman. I would be very circumspect in dealing with that corrupt middleman. But I would not necessarily refuse to deal with him because, if he were able to explain rationally why he did certain things and, if it were necessary to maintain the ongoing cover and scenario, I might have to deal with him. But I certainly would do so in a very circumspect and suspicious manner. So, I cannot give you a total, 100 percent response that we would not. I can say that we certainly would consider very carefully any allegations, or any implications from information, he provided.

Mr. WHEELER. If he twice provided individuals whom he said would take bribes and they did not, would you then give me [99] 100 percent assurance that he would not be relied upon again?

Mr. REVELL. I would not give you 100 percent. I would say I would be even more suspicious and more circumspect in dealing with him. Again, it depends. You cannot take these things out of an ongoing context. They evolve and develop within a very complex undercover scenario in most instances. You have to evaluate them based upon the totality of those circumstances. But I certainly would say that, if an individual, a corrupt influence peddler, has twice tried to provide you with an improper situation based upon the understanding he had of what you were interested in, then you would indeed be very circumspect in dealing with him and make sure that there were these safeguards in place to insure that no innocent third party was in any way implicated in a criminal act which they had no intent to commit.

Senator MATHIAS. Mr. Wheeler, let me inquire. Is this an appropriate point to interrupt you?

Mr. WHEELER. Yes, Senator.

Senator MATHIAS. Mr. Revell has been testifying now for several hours. It is my understanding that you have approximately an hour of further questions.

Mr. WHEELER. At the most, Senator.

Senator MATHIAS. Then I am going to suggest that we take a recess for 1 hour until 1:30. We will ask Mr. Wheeler then to complete his examination from 1:30 to approximately 2:30. [100] At that time members of the committee will begin their examination.

The committee stands in recess for 1 hour until the hour of 1:30.

[Whereupon, at 12:35 p.m., the committee was recessed, to reconvene later the same day.]

[101] AFTERNOON SESSION

Senator MATHIAS. The committee will come to order.

Mr. Wheeler, are you prepared to continue your questions?

Mr. WHEELER. Yes, I am, Senator, thank you.

Senator MATHIAS. Mr. Revell, are you ready?

Mr. REVELL. Yes, sir.

Mr. WHEELER. Mr. Revell, we are finally at that point where I think we should address paragraph J of the guidelines which is entitled, "Authorization of the Creation of Opportunities for Illegal Activity," which, as Senator Leahy points out, is certainly the area that was principally involved in Abscam, but we need to explore what the guidelines say in terms of the FBI's policy today.

This section is the one that allows the FBI to have its undercover agents and informants offer bribes and buy and sell narcotics, and buy and sell stolen goods, isn't that right?

Mr. REVELL. Except for the sale of narcotics, I would say you are right. I do not know that we have engaged in the sale of narcotics; buying, yes.

Mr. WHEELER. All right. So, under this section, the FBI may not be investigating a crime that has already occurred, but may in fact be creating circumstances so that a crime will occur?

[102] Mr. REVELL. Correct.

Mr. WHEELER. All right. Paragraph J of the guidelines sets forth a number of requirements that must be satisfied for this type of an undercover operation, and in particular, I want to take them, beginning with J(2), pretty much one at a time, because I think these are important.

Paragraph J(2)(a) says that this type of an operation cannot be approved unless, "The corrupt nature of the activity is reasonably clear to potential subjects." My question to you, Mr. Revell, is when must the corrupt nature of the activity be reasonably clear, and in particular, must it be clear before the subject is brought in before, let us assume, video taping cameras, before the video taping cameras, or does this simply require that it must be made clear to the subject once he is brought in?

Mr. REVELL. It is made clear as early as possible during the scenario of the undercover operation. It is always made clear before a bribe payment is extended. The latest point that it could be made would be in the face-to-face meeting between the undercover agent and the public official.

Mr. WHEELER. And in fact, when you have middlemen—that is to say, unwitting middlemen, who do not know that they are dealing with the FBI, as was the case in Abscam—you do not know what those middlemen are going to tell the potential subject before they bring them before the cameras; is that [103] right?

Mr. REVELL. That is correct. We know what they tell us that they have told them and what the public official is alleged to have told them. We have to wait until the confrontation, until the meeting, face-to-face, to ascertain if indeed those inferences are true. That is the reason for the final test at the face-to-face meeting. There must be a confirmation by the public official that he knows why he is there, he knows the corrupt connotations of the meeting, he is willing to undertake whatever criminal activity has been discussed, and he is willing to accept a bribe for that purpose, before the bribe would actually be extended to him by the undercover agent.

Mr. WHEELER. All right. But ultimately, the fact is—and this is all under the approval process—when you are considering whether to approve an undercover operation involving political corruption, you know that if middlemen are involved, the only guarantee that you will have to protect an innocent person is that when that person is brought into the room, the bribe offer will be made unequivocally and clear; is that right?

Mr. REVELL. That is clear. The context of the operation would require that those elements be the final safeguard before any such bribe would be paid. And by the way, bribes are not authorized by the undercover operation. They still [104] are independently authorized through the chain of command. So the undercover scenario approval is only the first step in the approval process on the payment of a bribe.

Mr. WHEELER. Now, you said a moment ago that what you try to do is get the middlemen to tell the subject before he appears before the cameras, that the reason he is going into this room——

Mr. REVELL. They are not always before cameras.

Mr. WHEELER. That is right—is to receive a bribe offer; isn't that right?

Mr. REVELL. They certainly do not come out in those type of terms, but in the jargon of criminal behavior, yes.

Mr. Wheeler, we have over 1,300 pending public corruption investigations. Only 20 of those involve an undercover operation at the group 1 level. So the camera scenario is a very, very limited situation. There may be some instances with a cooperating material witness in which there would be an opportunity to provide that type of photographic or video coverage, but that is a limited circumstance. I do not want us to think that this is a widespread situation.

Mr. WHEELER. All right. Under this guideline, Mr. [105] Revell, would it be proper for the FBI to use middlemen without, in fact, trying to get them to let the potential subject know that if he goes to a certain place at a certain time, he is going to get a bribe?

Mr. REVELL. Well, in the first place, as I explained, we do not employ middlemen. We have no control over middlemen except in our representations to them and their representations to us, in which they assume that we are also criminals. That there is honor among thieves, as you well know, is not always true. While they tell us one thing, and we try and ascertain what they have told the public officials or any other person being brought to us, we cannot always be sure until that last line of testing the reliability of information. That is the face-to-face meeting.

Mr. WHEELER. But what I am talking about right now is not a particular factual situation but a policy question, and that is, is it the FBI policy that FBI undercover agents or informants or both will always try to get middlemen to tell the potential subjects that they are, in fact, going to be brought to a room for a corrupt purpose?

Mr. REVELL. I would say as a matter of practicality, yes. I am not aware that it is——

Mr. WHEELER. Let me put it negatively, Mr. Revell.

Mr. **Ricks**. It is not a guideline situation.

Mr. **Revell**. It is a practical investigative [106] consideration.

Mr. **Wheeler**. Let me put it negatively, and maybe we can clarify this. Would it be permitted under the guidelines to pay a middleman simply to bring someone before the cameras with the hope that, once the person appears, the undercover agent will be able to induce that person to receive a bribe?

Mr. **Revell**. No.

Mr. **Wheeler**. Never; that would be improper under the guidelines?

Mr. **Revell**. To pay a corrupt influence peddler to bring forward a public official or another subject?

Mr. **Wheeler**. With no assurance that that person knows or has been told——

Mr. **Revell**. Unless the middleman was himself a public official, and there was an ongoing bribery scenario in which he was supposed to accomplish certain objectives for the undercover operation. In such a case there would have been payments to him for his political influence or for his cooperation in some ventures that were undertaken, but just for the purpose of bringing other officials or other individuals into the scenario, no, that would not be approved.

Mr. **Wheeler**. Let us suppose, for example, that the FBI finds out that a corrupt middleman brings before the FBI's cameras—unbeknownst to the middleman, of course—that middleman brings before the cameras a person who was not told [107] by the middleman that this was for a corrupt purpose, but in fact, was told by the corrupt middleman that he was being brought to this place to discuss legitimate campaign contributions. What would be the FBI's policy with respect to what should be done as to that middleman?

Mr. **Revell**. As to the middleman?

Mr. **Wheeler**. Yes.

Mr. **Revell**. Well, presuming that you are not stopping the operation at that point, you have to maintain the cover of the operation. You cannot stop and say, "I am an FBI agent, and you misled me." Obviously, you have to carry on the scenario. You have to continue to maintain the cover. You have to maintain the roles that you are playing in order to continue the operation. So in essence, what you would do is challenge him in a way, appropriate to that scenario, as to why he misled you.

Mr. **Ricks**. Could I amplify a little bit, if I might? You are describing a particular fact situation, I believe, that occurred during the Abscam investigation. Once the politician arrived with the middleman, it was not that he tried to deceive what had occurred, but openly admitted that he had not told the politician the entire story. I think it needs to be put in that proper context. The middleman came forward, or the corrupt influence peddler, and said, "I did not have time [108] to tell him the entire story. He does not understand fully why he is here." I think that is important, because the actions of the undercover operative after that were certainly different than the normal actions he had taken before that situation.

Mr. **Wheeler**. Well, Mr. Ricks, that is right, but in fact, there are two instances in Abscam that we need to discuss to understand exactly what the FBI policy is here. There was the instance that you have described, but I want to set forth the other ones, so that we are very clear on what the problem is.

There was an earlier instance in which a different corrupt middleman had represented to the FBI agents that he was going to bring in a corrupt politician who would accept the bribe for a specific official act, and only after the entire taping session was done, and the offer of a bribe was made made, did the corrupt middleman inform the FBI that in fact he had lied; he had not ever told this politician what he had previously represented. That is case No. 1.

Several months later came the case that you are talking about, where the corrupt middleman showed up with the innocent individual and said, during the course of the taping, "I never informed him, basically, what I was supposed to inform him." But in that instance as well, the corrupt middleman had told the FBI before the taping session began that this person would take a bribe. So that in both instances, the FBI was lied to by the corrupt middleman.

[109] Mr. REVELL. But in both instances, the undercover agent did not extend the offer of a bribe because he ascertained during the meeting with the safeguards we had built into the scenario, safeguards which had to be satisfied before the bribe could be paid, that in fact the public figure did not know why he was there, was an innocent third party, was not intent upon accepting a bribe for a corrupt practice, and the bribe was not even extended, much less rejected.

Mr. WHEELER. That is right, Mr. Revell, and that brings me to a question about the comment you made a moment ago, which was that after all, the cover must be maintained, and you cannot chastise the middleman at that point because you will blow your cover.

Mr. REVELL. Well, you can chastise him within the proper vernacular for the situation. You can say, "I am not going to deal with you." There are many ways, depending upon the type situation. If you are talking about organized crime, there is certain jargon. If you are talking about political circles, I am sure there is a different jargon. There are ways to get across your point. But it is not by saying, "I am a law enforcement officer, and you did not live up to what you told me; therefore, you are not credible, and I am not going to deal with you."

Mr. WHEELER. But in fact, Mr. Revell, it brings us really to a more fundamental question and that is, when you encounter [110] situations such as this where in two distinct instances involving two different middlemen, where the middlemen have lied to the FBI, and the FBI has been asserting that that is one of the safeguards, namely, that the middlemen will not be inclined to lie, and they will be inclined to tell the truth to the FBI, doesn't that suggest that at that point, the operation ought to be terminated, that in fact, innocent poeple are being hurt, that two innocent public officials were brought before the videotaping cameras on the misrepresentations of these middleman?

Mr. REVELL. But more were brought before the cameras who did accept bribes and who were intent on selling their office. That is a policy issue, I think, as far as the Congress is concerned, whether or not that has more harm than a public figure who sells his office.

Obviously, we would prefer, under any circumstances, to avoid having a meeting in which there could be any connotation by the public or the news media that a public figure could be bought. But that is not the real world, and we cannot depend upon the representations of criminals, many of which—most of which—were true, to be totally true. I do not know of a litmus test that we could ever apply that would assure us 100 percent that we will not reach a face-to-face meeting, whether it is with a drug dealer, whether it is with a thief, or whether it is with a corrupt political figure or an alleged corrupt political [111] figure. When we execute a search warrant for which we have provided probable cause, we do not have a certain guarantee. What we have are facts and circumstances that lead us and the magistrate to conclude that evidence is there. In this situation, we have taken safeguards to assure that a bribe not only is not taken under false pretenses, such as a campaign contribution, but that it is not even extended.

We are very sensitive to the fact that a public figure even appearing in that type scenario is harmful, and certainly, we go to elaborate lengths to try and preclude that. Many individuals, as the Senator mentioned this morning, whose names were mentioned in Abscam, were never brought before the camera because the elements that we were attempting to assure were not met.

I think you made the key point, Mr. Wheeler, when you said that there was no bribe offer, and that they did walk away from that meeting, having had an opportunity to reject an offer if it had been made, but that it never reached that point because, ascertaining that they did not know why they were there, that they were unwitting participants in this situation, the bribe offer was not even extended.

Mr. Wheeler. Well, let us focus on that, as a matter of fact, Mr. Revell. In the instance that Mr. Ricks has [112] referred to, the way the transaction occurred was that the individual was brought before the cameras; it was determined fairly early on that the individual had not been informed by the middleman why he was there and had been misled, innocently, and the conversation went on for some 20 to 22 minutes in this fairly unseemly, indeed seamy, circumstance with this person being videotaped, and that transaction was simply allowed to evaporate, and a bribe offer was never made.

Now, it could certainly be argued, don't you agree, that the fair thing to do for that individual would have been to offer a clear, unequivocal bribe, to give that person a chance to say, "No," and express his outrage and walk out, instead of having this rather ambiguous situation just come to a somewhat subtle close?

Mr. Revell. No, I do not agree, because I think it is clearly the responsibility of the law enforcement agency to ascertain that the person knows why they are there. We may think that the person understands he is being bribed, and he may think he is getting a legitimate campaign contribution, and then you would never remove the stigma. The semantics involved are not going to be so direct that you could ever resolve that question. I think it is a much greater safeguard for the public official that we have him clearly articulate that he is willing to commit a criminal offense, that he knows he is there to negotiate that criminal offense, [113] and that he is willing to take a bribe and, in fact, how much that bribe is, before we ever extend that offer to him. I think that is a much stronger safeguard as to the integrity of the public official and to the investigative process than hitting him cold, and saying, "Here is some money," and presuming that he knows it is for a bribe, or that there is some doubletalk or jargon going back and forth that might be interpreted as either a bribe or a legitimate campaign contribution or a legal expense.

I do not believe we could ever do what you asked with the same degree of effectiveness in protecting the innocent, who will, on occasion, come before this type situation, as we do by maintaining our safeguard.

Mr. **Wheeler**. Once the FBI has determined that the individual who has been brought before its cameras is entirely innocent when he was not in fact told he was there for corrupt purposes, the FBI could, unambiguously and clearly, state, "Mr. Official, we are offering you $50,000 as a bribe in return for your promise to perform this specific legislative act," and that would make it unambiguous, and that official could then reject it and thereby establish, beyond any shadow of a doubt for anyone who might see that tape when it is leaked, that he in fact rejected the bribe.

Mr. **Revell**. When the tapes leaked?

Mr. **Wheeler**. That is right—or the transcript.

[114] Mr. **Revell**. The transcript of trial or the release of the tapes? There are many situations in which there will be a great deal of byplay back and forth, protestations of noninterest while continuing the discussion, and after some period of time, it will become clear that the official does indeed know why he is there and is indeed willing to negotiate, but has been going through a checking process on his own.

The quickest way I know to scare off corrupt influence peddlers and those involved in this type business would be to make a straight, up-front bribe offer. You would have the political figure get up and say, "What are you trying to do?" Corrupt public figures are not going to sit before a group of people they do not know and say—except on a couple of occasions in this particular case you are discussing—that, "I am a corrupt person." There has to be more of a drawing out of the situation, in which they reach, in unambiguous terms, an understanding without saying, "I am going to commit a crime, and you are going to pay me to commit that crime." The juries certainly have no trouble in ascertaining the true intent. Otherwise, we do not get to the jury.

Mr. **Wheeler**. But Mr. Revell, I think we all understand that that is the case with respect to the people who are in [115] fact corrupt that they are going to be tricky, but I am talking about the situation where the FBI agents on the spot and monitoring the whole transaction conclude that this person is innocent, this person was not brought there for corrupt purposes; now, the question is, how do you now do the very best you can for that person who has clearly been harmed. Do you give that person an unequivocal chance to reject a clear, unequivocal bribe offer, or do you just let it kind of fade away and call off the transaction?

Mr. **Revell**. We end the meeting in an amicable and unobtrusive way as we can, and we do not extend a bribe offer, and we certainly do not engage in leaking or anything else that would publicize the meeting. We keep that meeting totally confidential; however, when charging a corrupt influence peddler, there is some risk that the public official's name will be on the public record.

I think the comments of Chairman Mathias this morning indicate that there are many names that came up in Abscam, of both public officials and private individuals, which have not been released, and we certainly try and maintain that confidentiality. We cannot guarantee confidentiality with the cases going through court and so forth; disclosure may be required in discovery. But we as an institution certainly owe confidentiality to any citizen who has come into the midst of an ongoing operation innocently and has been [116] in essence led out of the operation. We cannot guarantee that that person's name will never appear in the news media, even though we try to avoid that.

Mr. **Wheeler**. All right. Mr. Revell, paragraph J(2)(c) requires that no such operation will be approved unless the nature of any inducement is not unjustificable. What does "not unjustifiable" mean?

Mr. **Revell**. That is a term that refers to the judgment of the investigators and prosecutors involved as to what is a reasonable bribe offer under a particular set of circumstances. It would not be reasonable to offer an exorbitant amount of money for a minor criminal offense. It might be reasonable to offer a substantial sum of money for a very serious offense. So it is again a matter of the judgment as to what would be appropriate under the facts and circumstances and types of criminal violations that we are dealing with. To define it more specifically than that would be very difficult without looking at a fact situation.

Mr. **Wheeler**. The problem, I take it, that you have in a bribe situation, though, is that bribes are, as you pointed out, clandestine and unique to the particular individual and the particular transaction; isn't that right?

Mr. **Revell**. That is correct. We do have some information. We know what the middlemen, corrupt influence peddlers who are supposedly dealing in this, tell us is needed. We know [117] what our own previous investigations in that particular area tell us would be a going fee. We also have what we would be willing to pay. We certainly would be concerned with the level of corruption, whether it is systematic and endemic, or if it is isolated. There are a multitude of factors that would go into the formulation of what we would be willing to pay. It also would depend on whether or not we intend to go through with the payment. We might offer something that we did not intend to complete—a buy-bust type situation. We might offer $1 million for a load of narcotics, but we have no intention of paying that million dollars. We intend to make an arrest to interdict that operation.

Mr. **Wheeler**. Is this the same policy that was in effect in 1978 and 1979, that the nature of any inducement had to be not unjustifiable?

Mr. **Revell**. I do not know—I cannot recall specifically. Maybe Mr. Ricks can refresh my memory. It has always been the policy, informal if not formal, through the process of approval.

Mr. **Ricks**. During this process of paying the bribes, this was a concern. Of course, it was understood that there are certain cases that stand for the proposition that if a bribe payment is too large, then that in and of itself could be coercive or intimidating in its nature; an ordinary man would succumb to such pressure. So our ultimate test was to [118] try to model the real world. In a number of cases in our history, the FBI indicated that what we were paying was pretty much right on the mark. Going back, we found a number of bribe cases involving $50,000, $25,000, in that range, some of them up to $200,000, even for State legislative officials. So in looking at it historically, we found we were in the ballpark. Also the dollar amounts called for and requested by the public officials themselves were in most cases reduced. We negotiated; they would propose an amount, and we generally would reduce the amount.

Mr. WHEELER. Well, Mr. Revell and Mr. Ricks, whichever one of you cares to answer, isn't it a fact that in Abscam, one Senator was approved by the FBI for a bribe offer of $50,000 through the formal approval process?

Mr. REVELL. A Senator for $50,000?

Mr. WHEELER. A Senator of the United States.

Mr. REVELL. Mr. Wheeler, I know Mr. Mullen will testify as will Mr. Wilson and Mr. Good. I am prepared to answer that. I am not sure. I have not reviewed the Abscam material, and I was only here for a short period of time. I am sure that either Mr. Mullen or the other witnesses could answer that, or Mr. Ricks. I cannot.

Mr. WHEELER. Let me provide you with some information that we obtained from the files of the Department of Justice. One Senator was approved for a bribe offer by the FBI for the sum [119] of $50,000. A second Senator was approved for a bribe offer by the FBI for the sum of $75,000. A third Senator was approved for a bribe offer by the FBI for the sum of $100,000. A fourth Senator was approved for a bribe offer by the FBI of $125,000. Now, the one Senator who was prosecuted and convicted for the crime of bribery was offered a bribe of $12.6 million. Do you think that that $12.6 million is not unjustifiable in relation to the other sums that were authorized for other Senators?

Mr. REVELL. There are many facts and circumstances surrounding that situation, including what that particular individual represented that he wanted, and it was not a money offer; it was an interest offer in a corporation, an ongoing concern. That is an area that I knew would concern this committee, and I think you will get very succinct and direct testimony on it. I am not prepared or capable of giving you that type of testimony because first, I was not involved in that, and second, in preparation, I have tried to stay within the parameters of what you indicated you wanted me to testify to.

Mr. WHEELER. Under the existing guidelines, Mr. Revell, would a bribe offer of $12.6 million to a Senator of the United States be considered not unjustifiable?

Mr. REVELL. It would entirely depend on what was at stake and what was involved, whether [120] it involved such things as the security of the country or secret information or industrial activities which were very vital. There again, $12.6 million, not in a direct payment but in interest, while substantial, is not unheard of, and it would again depend upon the entire factual situation and what was represented by the indviduals themselves.

Mr. **Wheeler**. Well, for the record, Mr. Revell, of course, I am not sure what you mean by "interest," but when we refer to the $12.6 million that in our view was offered to Senator Williams, that was said to be the sum that he would get from a simultaneous purchase and sale of a corporation that would occur on the same day, so that it would have been an instantaneous profit on his behalf of $12.6 million, which is the equivalent of cash payment.

But one other thing I think we should clarify, Mr. Revell. You were chairman of the Undercover Operations Review Committee, I think we agreed, in approximately September 1979 through the early part of 1980, which is the period when most of the bribe offers that I have just discussed except for the one to Senator Williams were approved. Does that mean that those approvals did not go up through the Undercover Operations Review Committee?

Mr. **Revell**. The only time I chaired the committee was in October 1979 when Abscam was presented, and that was for additional funding. The committee approved the first [121] three specific bribe offers. At that time, a decision was made, consistent with the current guidelines which were not in effect then, that the committee was not operational, that it was to consider proposals and to assess the sensitive issues, the financial issues, the worth and value of proposals, but not make operational decisions. A committee cannot be, as you well know, effective operationally. It was not created for that purpose, and after the first three situations were presented to the committee, it was determined, that while the views of those involved were sought out in many instances, independently and through the chain of command, it was not necessary and overly cumbersome to go through a committee process.

So, therefore, while I was chairman of the Undercover Review Committee, I never reviewed with the committee any specific bribe offer.

Mr. **Wheeler**. Mr. Revell, paragraph J(3) is probably the one that is of the greatest concern. It allows inducements to be offered to an individual—and I quote—"even though there is no reasonably indication that he has engaged or is engaging in the illegal activity that is properly under investigation as long as certain conditions are met," and as I read paragraph J(3), I want to confirm that this is accurate. A bribe offer can be made even though there is no reasonable indication that this person has ever engaged or is engaging in the illegal [122] activity that is under investigation if any of three different conditions is met: No. 1, if the Director authorizes it in writing; No. 2, if the Undercover Operations Review Committee finds, insofar as practicable, that there is a reasonable indication that he is engaging, has engaged, or is likely to engage in illegal activity of a similar type; or third, if the Undercover Operations Review Committee finds, insofar as practicable, that the opportunity for illegal activity has been structured so that there is reason to believe he is predisposed to engage in the contemplated illegal activity. Is that right?

Mr. **Revell**. Yes.

Mr. **Wheeler**. Mr. Revell, you referred earlier in your prepared statement to a talk given by the Attorney General of the United States, Mr. Smith, and in that same talk, he stated:

> The authorization of the FBI Director is necessary before any inducement may be offered to someone absent a reasonable indication that the person already has engaged or is engaging in the illegal activity being investigated.

Now, he is wrong in making that statement, isn't he, because there really are three situations in which a person can be offered a bribe, even in the absence of any reasonable indication of past or present criminal activity?

Mr. **Revell**. If that is a complete and accurate quote of the Attorney General, then there is an omission of the third criterion, as you [123] have just placed in the record.

Mr. **Wheeler**. The structural one. And on that structural one, Mr. Revell, the idea, I take it, is that if the nature of the bribe sequence, if the offer is structured in a certain way, then that is OK, even if there is no reasonable indication of prior criminal activity by this public official. Is that generally what that says?

Mr. **Revell**. Well, obviously, we do not flag people in off the street and offer bribes to them. We have to have indications. Now, those indications may be accurate, or they may be inaccurate, but we have indications through the representations of coconspirators, corrupt influence peddlers, that the individuals will engage in the sale of their public office through corrupt activities. And of course, there is the protection afforded by the final act or the final transaction, which would be the face-to-face situation that we have gone through repeatedly previous to this.

Mr. **Wheeler**. Is there any attempt—I guess this is what I am getting at ultimately—is there any attempt, when a middleman brings up the name of a public official, any attempt required by the guidelines, to check on the reliability of the middleman, on the reliability of the middleman's information, or on the background likelihood of the official whose name has been mentioned, to determine whether there is in [124] fact some reliability to this statement about that official?

Mr. **Revell**. Of course, since we are acting covertly we try and ascertain all the information we can, both about the individual whose name was mentioned and also about the individual with whom we are dealing. The individual we are dealing with may have a track record, may have produced other people, or may have not produced other people, so we have to judge again the issue on the facts that are available at the time.

If there is a clear representation by a corrupt influence peddler who has some credibility, and he alleges that a public official will take a bribe and will sell his office, then under most circumstances, we will attempt to arrange a face-to-face meeting to ascertain if that assertion is in fact true.

Now, we will go through some very careful steps to try and structure that, to weed out those individuals who are not inclined to so engage in criminal activity. When that allegation is made, then we have an obligation to proceed to determine if in fact that individual is selling his office, has participated in a practice of selling political influence or committing acts based upon his public and official position.

Mr. **Wheeler**. Suppose, Mr. Revell, that once this public official's name has surfaced that the FBI, in conducting its check to see if this person has engaged in criminal activity [125] in the past, actually determines that this public official has in the past been offered two bribes and on both occasions reported them to the law enforcement officials and the people who extended the bribes were prosecuted. Would that cause you not to bring that person before the cameras on the basis of what the middleman had said, no matter how reliable the middleman might appear to you?

Mr. **Revell**. That would be a circumstance that we would certainly want to discuss at a very high level with the Department and the Bureau. It certainly would be an indicator that would flag caution. The other situations may have been at a very low level, and this might be at a very high level. I cannot give you an assurance, Mr. Wheeler, that this or that would happen. It would depend entirely on the circumstances. And again, if the middleman had proven to be reliable in his representations, not in his character but in his representations, then that would be a factor. We do not make these decisions in a vacuum. They are made on the basis of the collective knowledge of the prosecutors, the Department of Justice officials and Bureau officials concerning the entire factual situation, the history of the operation, the representations made and actually carried out, the representations made and not carried out. It would cause, in my view, a very, very careful consideration as to whether that particular [126] meeting should proceed.

Mr. **Wheeler**. All right. Let me ask you to talk, Mr. Revell, for just a couple of minutes, just for further clarification on this. We have talked about the situation where you check and find either something that shows the person may be corrupt, or you find evidence that he in fact is quite clearly not corrupt. What if you conduct a check, and you find nothing? Will you nevertheless bring that person before the cameras on the basis of the middleman's representation?

Mr. **Revell**. I cannot with certainty, but I would say past experience would indicate that we would attempt to arrange, through a proper scenario, a meeting, at which time the representations would be made with the safeguards built into that meeting.

I would like to point out that these paragraphs relate to all undercover operations, including narcotics buys, sting operations, situations involving industrial espionage and so forth. We have been discussing them entirely in the context of public corruption, but of course, they apply even more broadly, since we have many more cases in the areas of property crime, organized crime, and white collar crime of other than public corruption.

Mr. **Wheeler**. But the public corruption cases, of the ones that you have described, are the only ones that are clearly delineated as sensitive circumstances in the guidelines?

[127] Mr. **Revell**. No. There are many others——

Mr. **Wheeler**. Of the ones you have just mentioned, I said.

Mr. **Revell**. Yes. That is because that has been the topic of discussion, but there are many other sensitive cases involving other types of criminal activity that would require the same degree of scrutiny and the same review process and the same approval process.

Mr. **Wheeler**. Now, on undercover agents themselves, Mr. Revell, is there a formal FBI policy either in the guidelines or elsewhere, that requires undercover agents to prepare what you referred to earlier as FD 302's, or summaries of conversations or important events during an undercover operation?

Mr. **Revell**. During any investigative operation, agents are required to reduce to a written format, either through signed statements or through the interview report form, called an FD 302, pertinent information which may be the subject of testimony at a later date.

Mr. **Wheeler**. Are internal administrative sanctions imposed by the FBI against agents who fail to comply with that requirement?

Mr. **Revell**. Either if they fail to willfully, yes, or if it becomes a pattern which indicates lack of professional attention to their responsibilities, yes. I cannot say that every time an agent has failed to reduce a conversation that later turned out to be relevant, that he was censured or **[**128**]** in some way disciplined. But a pattern, a practice, or an obvious oversight, if it would not be satisfactorily explained, would subject an agent and has subjected agents to administrative action.

Mr. **Wheeler**. What document or guidelines contain that requirement with respect to preparation of FD 302's?

Mr. **Revell**. There is a provision of our Manual of Administrative Operations that I can introduce into the record that lays out all the communications requirements, including signed statements, FD 302's, and so forth, that clearly spells out the obligations of the agent and under what circumstances.

Mr. **Wheeler**. I think that, with the Chairman's permission, that we ought to in fact attach that as an exhibit.

Mr. Chairman, may we have attached as an exhibit or as an appendix for the purposes of these hearings, those provisions of the Manual that he has just described?

Senator **Mathias**. Is there objection?

[No response.]

Senator **Mathias**. Without objection, so ordered.

[See exhibit 25, pages 1196–1223 *infra*.]

[129**]** Mr. **Wheeler**. Also, Mr. Revell, is there any provision either in the guidelines or in the manual you have just referred to, or elsewhere, that prohibits undercover agents from engaging in commercial transactions with or accepting gifts from or giving gifts to informants with whom they are working in an undercover operation?

Mr. **Revell**. There are several general provisions that preceded this particular case, which, read in their proper context, in my view, would have certainly indicated that there should not be a financial relationship between an informant, a subject, certainly, or a cooperating material witness and an FBI agent.

We now have very clearcut, precise, specific rules prohibiting such conduct.

Mr. **Wheeler**. Where do those appear?

Mr. **Revell**. Again, in the "Manual of Administrative Operations," and a specific communication was sent forth to all our agents. The previous situation—the previous instructions and provisions were scattered through various portions of our manual and various communications have been sent to all agents. Again, we can provide that for the record, if you want the exact details.

Mr. **Wheeler**. Mr. Revell, isn't it the case that in virtually all, if not all, undercover operations, that the FBI employs some form of electronic monitoring devices, whether it [130] is consensual monitoring or wiretaps under Title III?

Mr. **Revell**. Not at all, because some are of such immediacy and of such short duration that it may be only visual surveillance by a surveillance team or backup agents. We may not have the opportunity for technical coverage. Whevever possible, we prefer to use the augmentation of either electronic surveillance or audiovisual surveillance because of its use in evidence, and its clarity. The specifics of the situation are captured so much better than anyone could possibly do by his own recollection.

Mr. **Wheeler**. And one of the legal provisions that protects the public from unwarranted or undue invasion of privacy is Title III with respect to wiretaps, is that right?

Mr. **Revell**. With respect to wiretaps or microphone surveillance within a private area.

Mr. **Wheeler**. Does the FBI have its own additional safeguards with respect to consensual monitoring?

Mr. **Revell**. The Department of Justice does.

Mr. **Wheeler**. First of all, why don't you define "consensual monitoring"?

Mr. **Revell**. Consensual monitoring is the recording of a conversation either telephonically or in a face-to-face meeting, by the consent of one party, but not necessarily by the consent of all parties.

Mr. **Wheeler**. And what is the Justice Department's [131] safeguard with respect to consensual monitoring?

Mr. **Revell**. The consensual monitoring of a telephone conversation can be done upon the authority of the SAC with the concurrence of the U.S. Attorney in the area where it is to occur. The monitoring through what we could call a body recorder or through a microphone would be done through approval at the headquarters level, at the section chief level, and at the Office of Enforcement Operations of the Department of Justice.

Mr. **Wheeler**. And in fact, the Attorney General's guidelines on criminal investigations in paragraph C(5)(e) sets forth that requirements, doesn't it?

Mr. **Revell**. Right

Mr. **Wheeler**. Have you given any consideration to going to a more stringent requirement, such as a warrant, before engaging in consensual monitoring?

Mr. **Revell**. No. In fact, the internal departmental policy is more stringent than the law requires, because the Federal law does not require, for consensual monitoring, any type of authority. Certain States do require court orders and involve a more stringent legal process. Under the Federal law, as long as one person consents to the recording of the conversation, there is no legal requirement for the obtaining of any type of warrant or court process.

Mr. **Wheeler**. Mr. Revell, would you advocate that the Federal law be changed to conform to the law that exists [132] in several States that does require a warant for consensual monitoring?

Mr. **Revell**. No, sir, the purpose of the recording is to verify the testimony of the witness, and the witness has consented to be recorded, and the witness is available and will be on the witness stand. The recording simply confirms what the witness would testify to anyway. There is no expectation of privacy, and all we would be doing is precluding the jury from hearing the best evidence, because the individual who has consented to the recording will be there to testify. What you would be doing is restricting the jury from hearing the best evidence of what actually transpired in that meeting or during that telephone conversation.

Mr. **Wheeler**. Mr. Revell, I really only have two more questions for you. The first is, as I understand the current law—and I would like you to confirm this—there are several statutory provisions that make it difficult for the FBI to conduct undercover operations, such as statutory provisions that arguably preclude the FBI from leasing property, from making advance payments, from depositing funds, in banks, from using income from undercover operations to offset expenditures. And it is also my understanding that in 1978 and 1979, the FBI obtained legislation—or, Congress enacted legislation—exempting the FBI, but simply for 1 year at a time, from those statutory restrictions.

[133] Would you describe, please, what has happened since 1979 and what effects, if any, on the undercover operations these problems have raised?

Mr. **Revell**. Mr. Wheeler, you very precisely described the exemption process which, by authority of the authorization bills which were passed, allowed us to deposit funds—these are in undercover operations—deposit funds, appropriated funds, in banks, lease property, and use the proceeds of our operations to offset expenses in such undercover operations. All of these are proscribed by various Federal statutes because of general housekeeping rules and regulations.

The authorization process is a good vehicle, except we have not had any authorization bills for the last couple of years, and therefore, it has broken down as a viable means to assist us in these operations. We have relied on legal opinions to lease property and to deposit appropriated funds. We cannot use proceeds to offset expenses. Thus, we either do not authorize additional undercover operations which would be viable, which would be important to interdict certain types of high-level criminal activity, or we have to shut down ongoing operations because we cannot sustain their cost of operation. So it has been a very difficult and troublesome area for us. Obviously, the Congress intends for us to have this authority, but by the ebb and flow [134] of the authorization process, we have had a particular difficulty in this area.

Mr. **Wheeler**. The last question, Mr. Revell, is, as the chairman pointed out in his statement, there has been an unarguably massive increase in the number of undercover operations since 1977 when there were 53, and now the average is—well, the current number is over 400 per year. Would you explain how that has come to be, and in particular, how the Undercover Operations Review

Committee and you, the Assistant Director, have been able to review with the same thoroughness this greatly increased number of activities, despite the fact that you are still just one individual?

Mr. REVELL. All right. The increase has been largely in the group 2 undercover operations, which are nonsensitive, do not have the fiscal requirements or sensitive requirements, or the cost or duration to require a Headquarters approval process. For instance, in fiscal year 1979, there were a total of 32 presentations to the Undercover Review Committee. In 1980, there were a total of 96, of which 42 were new operations and 27 were renewals. In 1981, there were 118, and so far this year, there have been 56. So, while there was a substantial jump between 1979 and 1980, you have to recall that that was when we first implemented the Undercover Review Committee and that in 1980 the undercover guidelines were implemented. From 1980 forward, we have had 96, 118, and [135] 56. While I would say the work of the committee has escalated as we have identified more areas of sensitivity and concern, and certainly, stronger procedures for review, the total number of cases has not increased to the point where we think that we should either redefine the type of cases that have to be reviewed or take any other action to ameliorate the problem. It does require a great deal of time; a great number of people are involved in the process. It requires a great deal of my time. It requires a great deal of the Director's time, because we do go to him, if not with the operations themselves, then with briefings and updates. It requires the time on the part of the four departmental attorneys. But as I indicated in my comment right after my opening statement, we believe that these operations are not only sensitive, but so essential that they do require this type of scrutiny and approval process to insure that we do not make mistakes, and when we do—and we do make mistakes—that we correct those mistakes and do not repeat them. This is, I believe, well worth the time and effort we put into it.

Mr. WHEELER. Thank you, Mr. Revell, and thank you, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Wheeler.

Mr. Revell, on page 12 of your statement, you are referring to the Criminal Undercover Operations Review Committee, and you say there that:

> The Committee has as its duty the [136] thorough review of each submission, and it must make a determination, following a penetrating analysis of all facets and aspects of the proposal, whether or not the operation should be approved.

Now, could you lead us through that process? Do you look at the source of the information, do you make an evaluation of the weight of the evidence? Just exactly what do you do?

Mr. REVELL. All right. Before the proposal is submitted to Headquarters, it must contain a legal review by the legal advisor in the office, a discussion of all of the areas that you have just mentioned, Senator, and the basis for the position of the office that the operation meets the requirements of these considerations. The U.S. Attorney or strike force in that area must review and concur with the proposal.

When the proposal comes to FBI Headquarters, it comes to two different organizational entities. It comes to a substantive section—

generally, either the white-collar-crime section, the organized crime section, or the personal and property crimes section, on occasion to the terrorism section. At the same time, it goes to the undercover and special operations unit, which monitors and coordinates undercover operations. At that point again, there is a [137] review of the totality of the package from its legal, ethical, moral, operational, effectiveness, and efficiency aspects. We have very finite resources, this year, only $6 million. We have a finite number of agents. We know that undercover operations not only require the undercover agents, but support, backup agents, control agents, and a great deal of supervision. So we are very selective, and the approval process insures the cases are at the proper level for using this expensive technique, and that the objectives are worthy of the amount of investment.

Only after it has been reviewed by the substantive agent supervisor and by the unit, will it then go to the program manager—the section chief, the supergrade special agent—who must then approve it. If he approves, it goes to our Undercover Review Committee. It is reviewed prior to the meeting by our Legal Counsel Division representative, by the other members of the committee, including the four members of the Department of Justice—and I outlined in my statement who they are and what level they are. At the time of the committee hearing, the proposal is examined in depth and is presented by the headquarters supervisor, who had to prepare the proposal for submission. He had the obligation of going back to the field office, answering all the questions that have been posed to him in the review process [138] and is in a position, in most instances, to fully answer the questions. On occasion, in very complex, sophisticated, or sensitive operations, we will have the case agent, the undercover operative, or the supervisor, come in from the field and make—and many times, in conjunction with an assistant U.S. attorney or a strike force attorney—a presentation to the committee. Those are not normal circumstances, but they have occurred on a frequent basis.

The committee can put any caveats or limitations of any type on their approval, or they can reject the proposal. If they reject it, they will specify why, and they will either send it back for modification or reject it outright. If it is rejected, of course, it does not come to me. If it is approved, it comes to me. Then I read the proposal, read the position of the Undercover Review Committee, and make my decision. Now——

Senator **Mathias**. Including weighing the evidence?

Mr. **Revell**. Yes, sir.

Senator **Mathias**. Making some assessment as to the credibility of the source.

Mr. **Revell**. If there is a source involved. Many undercover operations may not involve a source. They may involve a cooperating witness, a person who has provided this information and who is going to be a material witness. There is not [139] always an informant involved. It may be a citizen who has simply provided——

Senator **Mathias**. By "source," I meant whatever that is.

Mr. **Revell**. Yes; including the credibility of the source or sources, whatever independent investigation we have done to ascertain not only the source's information, but what we can independently gather, and the experience of the prosecutors and the agents and in many instances, other law enforcement officers in that particular area.

At that time, Senator, the committee can recommend either consideration by the Director, or in certain instances, consideration by the Attorney General. They can put those types of caveats on the proposal. I can also, if they have not made such a recommendation, determine that it should go to the Director, or that it should go to a high level departmental official.

Senator MATHIAS. Now, you also said that the ultimate protection of the target is his meeting, at which he has the opportunity to reject the bribe; that is the moment of truth.

That is the final line, if every other situation has not occurred prior to that. To what extent is that in your mind, the fact that there is going to be this moment of truth? To what extent is that in your mind, as you go through the earlier steps of the process, with the feeling that that protection does exist and that therefore, you can [140] resolve doubts up to that point?

Mr. REVELL. Well, again, Senator, we prefer to establish these various criteria as early on in the investigation as we can. The sooner we establish the criteria, the better we can plan to try to avoid this problem of innocent individuals coming into the operation. That is not always possible, and when it is not possible, then the protection that I have discussed is there. But the earlier we can ascertain either the criminal intent or the lack of criminal intent, the better off we are in the investigative process.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Just following on that same line, Mr. Revell, it seems to me it is almost a charade to say that there is really this checkpoint proposition, that first you try to ascertain the validity of the claim by the middleman that so and so will take a bribe, or then you try to run at least a spotcheck on the individual target to see if it produces anything that would give you any kind of indication as to whether or not this is a live one. But the fact is that even if all of this turns up totally negative, you still go ahead with the bribe offer, as you have done on an occasion or two. And as I read the exceptions, the "unlesses" to the set of guidelines that you have, you can in fact make a bribe offer before cameras to an individual who you have no knowledge of ever being involved in any way in any kind of illegalities, [141] much less the kind you are actually dealing with, and who you cannot verify from the middleman that what he is saying has any validity, that he actually did talk to the man and that the man indicated that he would be willing to accept a bribe.

So the final line is you can go directly to that process of drawing anybody in the United States in before cameras and make a direct bribe offer. Now, you do have the caveat that if during the process of making this bribe offer, it becomes obvious to you that he is either not interested, or he is unaware of what is being proposed to him, that you can call off the deal and not actually offer him the money. There may be some question of semantics here on the basis of some of the tapes I have seen as to when a bribe offer actually occurs. I think in at least one case that I say, where the deal was called off, you could conclude that actually, the opportunity was there for him. You did really make a bribe offer, if he had been in the position to really want to grab it and go, but you never did offer him the money as such, you did not pull out an envelope. So is seems to me that that situation does occur. You can take any citizen in the United States, with nothing more than the word of the convict or known criminal, and bring him in, and he is interested in a bribe, and you can offer him a bribe in front of the cameras. That is the bottom line situation, with all these guidelines that we have drawn up. Is that inaccurate?

[142] Mr. REVELL. Well, we could certainly have the meeting. Whether we offer him the bribe, Senator, I think is the essence of my conversation with Mr. Wheeler.

Senator HUDDLESTON. Well, I meant you can bring him in for the purpose of offering it.

Mr. REVELL. Right. Just the same way that if we have an individual who is allegedly dealing in stolen property, we can meet with him to ascertain if he will sell us stolen property. If we have someone who is alleged to be selling narcotics, we go and meet with him to determine if he will sell narcotics. The law of entrapment and the guidelines allow us to have a meeting to ascertain whether our information is accurate or inaccurate—that an individual is engaged or will engage on the representations of individuals whose credibility we may not have been able to test——

Senator HUDDLESTON. Well, I understand that, and I understand that any person still has the right and can at any point say "No."

Mr. REVELL. That is correct.

Senator HUDDLESTON. And if a person is as honest as he ought to be, he will say, "No," and I am not trying to excuse anybody. I am just saying that as the guidelines operate, any citizen of the United States can be brought in before cameras and offered a bribe.

[143] Mr. REVELL. And as Mr. Wheeler pointed out, he may not even get a chance to say "No".

Senator HUDDLESTON. That is right. Now, you deal with the criminal element a lot more than I do, and particularly con men—at least, I hope you do—sometimes, we do not know——

Senator MATHIAS. We hope that from both directions.

Senator HUDDLESTON. But I find that among some, and particularly those confidence operators, that there is a lot of braggadocio connected with it, and they claim a lot of times that they have got a lot of influence and contacts and whatever. As a matter of fact, the transcripts will show that one confidence man was going to bring in a Senator who has been dead for over 15 years, and I do not know whether that got up to the Director or not to make a decision on that one, but——

Senator McCLURE. That was a sensitive case.

Senator HUDDLESTON. At least, that is the kind of thing that you encounter.

Let me ask you this. Is there any classification or any category of citizens in this country in which you are less—or, let me say this—in which you are more likely to accept the fact that they might be involved, would be willing to become involved, in an illegal action. Do you presume that certain people, although there is no record of that individual ever having engaged in illegal activities, but you presume that if [144] anybody makes a charge or a claim against him, why, it must be pretty good.

Mr. REVELL. No, sir. We do not have any class about which we make any such presumption. If you recall, former Assistant Attorney General Heymann, in testifying before the Senate immediately after the Abscam cases—and I may have the particular context wrong—was asked what he would do if the representation was made that President Carter would accept a bribe, and he said. "We would gulp and go forward." So I think that that is an accurate assessment. We follow and pursue the leads in these cases, keeping in mind those proper safeguards that we have in place to make sure that we do not have a bribe extended when we have a lack of evidence that there is any intention to commit a crime.

Senator HUDDLESTON. Thank you.

Senator MATHIAS. We have a rollcall vote in the Senate, so the committee will stand for 10 minutes.

[Short recess.]

Senator MATHIAS. The committee will come to order.

Senator Huddleston has, I believe, about 5 minutes further. I am going to ask Ms. Sewell to keep track of the time.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Chairman, I think we have indicated that the possibility does exist that anyone could be offered a bribe or led to the position of being offered a bribe in front of [145] electronic surveillance, under the guidelines as they exist. I think other than that situation, which may be arguable one way or the other, but the guidelines themselves look reasonable and appear to be designed to protect the citizens and to give proper control over undercover-type operations.

I think the real question, Mr. Revell, is how seriously are these guidelines taken from the executives down to the actual men in the field who are implementing?

Mr. REVELL. Senator, I can assure you they are taken with utmost sincerity. I know that you are well aware that in the Abscam case Judge Webster gave specific directions in many of the situations. Before I authorize—and I must authorize a bribe against all public officials except low level, local employees—I ascertain specifically that either these facts and circumstances have already been ascertained, or that before the payment is made, they will be ascertained, and I make that a condition of the approval.

Senator HUDDLESTON. But you have to make that determination on the basis of representations that are made to you, coming up all the way from perhaps that corrupt middleman or the cooperating con man, or whatever you want to call him, plus your agents, coming all the way up the chain; is that correct?

Mr. REVELL. That is correct, and in my statement, I talked about the ability and the integrity of our employees, our [146] agents. All the details of the bribe payment, particularly under the electronic surveillance techniques, are subject to full disclosure. We know exactly what they have said, how they have said it, how they conducted themselves. In those cases in which we do not have video tape, we have audio in many instances. We also have the observations of the agents who are providing coverage. We do provide very close scrutiny to the operations. Whenever we find someone is not able to carry out the instructions, then they are replaced. If they have made a serious error, then they are disciplined.

We take every step I think we can reasonably take, without shutting down operations, to insure the integrity of the process and to see that we do not reach the point where an innocent individual would appear guilty through the facts and circumstance. That, of course, is our primary concern, and we must, as I indicated earlier, gather the evidence that will withstand the scrutiny of the court and the appeal process, and of course, the determination of the juries. It does us no good to gather evidence that we cannot utilize in that process.

Senator HUDDLESTON. I understand that, but the weak link in that decisionmaking process, as I see it, is that either the corrupt middleman or the other cooperating agent—not an agent in the sense of being an employee of the FBI—when he is out there, making his contacts, you do not really know what he [147] has told the individual or what he has represented to that individual, on which he then bases his recommendation to you that he can bring so-and-so in to receive a bribe.

Mr. REVELL. I would agree with that as to the corrupt influence peddler or the middleman. I would not agree with that, Senator, as far as the FBI undercover agent or employee is concerned.

Senator HUDDLESTON. I meant to exempt him. I used the term, "agent;" I meant someone that you were dealing with, not an employee.

Mr. REVELL. I understand.

Senator HUDDLESTON. So that is an area where some breakdown could occur, or you could mislead someone, because you do not really know what he has said to that individual by the time he gets to your——

Mr. REVELL. Not only "could," but we have had instances where they have misled. That is the reason we have procedures and safeguards in place.

Senator HUDDLESTON. Have there been instances, Mr. Revell, where agents—and I mean now the actual FBI agents—have been disciplined for any violations of the guidelines?

Mr. REVELL. Senator, to my knowledge not for violations of the guidelines. We have had some agents disciplined for misconduct in conjunction with an undercover role or an undercover operation. But specifically for violations of the Attorney [148] General's guidelines, I am not aware of any such disciplinary action.

Senator HUDDLESTON. Coming, as I do—and I am the only nonlawyer on this panel, which I am sure has been obvious to you already—but I have been in the communications business, electronics communication. Being aware of what can be done, editing both sound tape and video tape, I, frankly, am somewhat surprised that the courts permit as much usage of electronic evidence as they do.

Senator MATHIAS. Maybe they do not know as much about it as you do.

Senator HUDDLESTON. Nevertheless, they do. And what bothers me sometimes, and I notice in some of the tapes we watched, there were differences in time between some of the actions that were taken. I am just wondering what is left on the cutting room floor, and who permits that to happen, who prepares this material for presentation?

Mr. REVELL. All of the original tapes are kept under seal in evidence, are subject to any scientific determination as to their originality and to the fact that they have not been altered or in any way edited. They are subject to the same rules of evidence——

Senator HUDDLESTON. But that is by affidavit.

Mr. REVELL. Well, no, sir, it is not only by affidavit. If the defense can raise any objective basis, then the [149] court can order, and in some cases has ordered, the tapes to be reviewed by independent technical experts who can determine if a video or audio tape has been spliced or altered or in some way changed.

Now, while there are copies made, and those copies through the duplication process may have some distortion, the originals are retained in evidence, are not available to the agents, except under supervision for review. Even the prosecutors see the duplicates so that the originals are maintained under seal of evidence.

Senator HUDDLESTON. And the defense has full rights to see the originals and have them inspected in any way they want.

Mr. REVELL. Yes, sir, to see and have them examined.

Senator HUDDLESTON. Well, on the basis of some I have heard, you ought to think about getting some better equipment.

Thank you, Mr. Chairman.

Senator MATHIAS. Senator McClure?

Senator MCCLURE. Thank you, Mr. Chairman.

You have described several times, in several different ways, a meticulous review process that starts with the agents in the field and this cross check with the Department of Justice and supervising agents at that level, and comes on up through the hierarchy, and I think you indicated that in sensitive cases, it goes, certainly, to the Review Board, and perhaps to the Deputy Director, or the Director, or the [150] Assistant Attorney General, or the Attorney General; is that correct?

Mr. REVELL. There are occasions where all of those steps occur, yes, sir.

Senator MCCLURE. And before the operation goes forward, if it is a sensitive matter, it has had that kind of an approval process?

Mr. REVELL. Yes, sir.

Senator MCCLURE. Now, when you talk about approval of the operation, you are talking about the total operation, and not each individual case that is involved, each individual contact, each individual meeting; is that not correct?

Mr. REVELL. That is correct.

Senator MCCLURE. So you could have an individual contact, an individual meeting, an individual subject to such a bribe offer, without any of that having occurred above the lower level?

Mr. REVELL. No, sir.

Senator MCCLURE. All right. If a new person is brought into the investigation, it goes clear to the top, in every instance?

Mr. REVELL. As I said earlier, only the Director can approve the bribery of an elected Federal official——

Senator MCCLURE. And that has been done in every case?

Mr. REVELL. Every case, that is, [151] of course, within the guidelines, and the guidelines were not in effect at the time of

Abscam. In that case, once it reached the level of the federally elected officials, either the Director or the Acting Director made those approvals.

Senator McCLURE. Now, you said about an hour ago, in response to a question Mr. Wheeler asked, that that approval could be based on the middleman's statement alone.

Mr. REVELL. A contingent approval, Senator, because the approval is contingent upon those factors that we have indicated several times must be satisfied before the bribe offer will be extended.

Senator McCLURE. Before the offer is made, but not before the investigation is authorized or the meeting is set up.

Mr. REVELL. That is correct.

Senator McCLURE. So that you can go through the authorization to investigate that particular individual, and you can go through the decisionmaking process to authorize offering a bribe on nothing more than the middleman's statement?

Mr. REVELL. I hate to keep coming back to the offering, but it is such a key point. There are authorizations.

Senator McCLURE. All right. So you authorize the offer, but it is a conditional authorization——

Mr. REVELL. It is a conditional authorization based upon [152] other facts.

Senator McCLURE. That is right, but you can set up the meeting, and you can authorize that the bribe be offered, subject to those facts developed at the meeting.

Mr. REVELL. That is correct.

Senator McCLURE. So the meeting can take place in front of the video cameras on nothing more than the middleman's allegation that this person would take a bribe?

Mr. REVELL. That is correct, but we always attempt to find out additional information. I know Senator Huddleston indicated that that was a charade, and I would like in some way to try and convince you that is not the case. We do not always have additional information, but we always attempt to find if there is additional information that will give us a better handle on the situation. We go through it. Whether it appears to be a charade or not, it certainly is a valid factor that we undertake.

Senator McCLURE. On the bottom of page 13 and the top of page 14 of your statement, you indicate that you do go through this process.

Mr. REVELL. Yes, sir.

Senator McCLURE. And you look at such factors as—and I am quoting from your statement: "Such factors as the source of the allegation"—you know that, it is the middleman—"the credibility and motivation of the source of the allegation"—and [153] again, that is the middleman—whether the source was in a position to know the information he furnished, and again, that is the middleman; whether independent information exists to corroborate the allegation, and there, you look for something besides what the middleman has said, and whether the allegation would constitute a violation of Federal law. Now, that is not an exhaustive list; that is just as an example. But out of that, unless you find something outside of the middleman's statement, you are depending on the middleman totally.

Mr. **Revell**. Senator, I would like to point out that in my statement, I am talking about the opening of a separate, independent public corruption case. Those are the factors that go into the determination of whether or not to open that case. In an undercover scenario, these same factors ultimately will be considered; some may not be totally met, but there will be an attempt to ascertain all these factors, almost exactly as you have stated, including the issue of whether or not the middleman's representations were in fact true.

I want to point out that that paragraph of my statement describes what we consider before opening a new, ongoing corruption case, not necessarily whether or not to have a meeting.

Senator **McClure**. Now, when you say: "a new, ongoing corruption case", you mean a new individual that is involved?

Mr. **Revell**. No, sir, because in essence, what we are [154] dealing with is a series of continuing events in an undercover operation.

Senator **McClure**. You have a middleman who is sitting down, talking, and he mentions three or four different names. Are those three or four different cases, or are they all one case?

Mr. **Revell**. We are getting into an area which can be both. If, for instance, certain——

Senator **McClure**. If they are working together on the same matter, it would be one case.

Mr. **Revell**. If they are working together—that is correct. Or, if there is any information of previous cooperation. Abscam was a series of interconnected cases, and as the courts have handled them, they have been a series of interconnected cases. There were different scenarios established for different circles of influence and corrupt influence peddlers.

Senator **McClure**. And did you follow this procedure clear to the top, from the decisionmaking, on each individual that was involved?

Mr. **Revell**. When required to do so. There were other, lower level officials involved than Congressmen and Senators. The appropriate level, as called for in our guidelines, was always reached in any specific bribery authorization.

[155] Senator **McClure**. Mr. Chairman, I know my 10 minutes is about up; it does not give me much chance to pursue this. But I would hope that at some time we can pursue, perhaps in executive session, if necessary, exactly what was done in several of these selected cases, both those that are already matters of public knowledge and those that were not, with respect to exactly how much checking was done and exactly how much they found before they went to the extent of authorizing that a bribe offer should be set up and a meeting held, because it seems to me that we are fencing here with good words on paper and a great deal of skepticism on the part of many as to whether or not those words are actually followed in practice. I do not know any way to get to the bottom of that without getting into the specific case and saying: "Okay, what did you find, how did you make that decision?" And I would suggest, again, that because reputations of individuals are involved, that we might very well want to do that in executive session rather than in open session, so that we can get to a conclusion as to how

we feel, not only the adequacy of the guidelines, but the adequacy of the procedures in following the guidelines.

Mr. **Revell**. Senator, I believe that is going to be the role of Mr. Mullen and the other witnesses to follow me, at least with respect to those who have been indicted and convicted. Now, as to others in whom you might be interested, I believe that under your rules, executive session might be required.

[156] Senator **McClure**. Mr. Neal?

Mr. **Neal**. Senator, if I may explain, tomorrow, we will go over individual examples, both those that have been mentioned, and with some code names, those who have not been mentioned.

Senator **McClure**. Well, I understand that, but that is with a different individual, and we have before us now the man that is responsible at the top of that decision. While the others, I can foresee that we might get, on the part of others: "Well, I did my part. I cannot tell you whether the others did theirs."

Mr. **Revell**. Well, Mr. Mullen, who is going to testify tomorrow, was in my position at the time of Abscam.

Senator **McClure**. On some of those cases—you have mentioned here in your statement some five different specific cases. Is it possible to go into detail on those, or are you precluded from doing that because they are still pending in court?

Mr. **Revell**. Most are still pending. Mr. Neal has undertaken a review of a selected number of undercover cases, and we certainly will be able to comment on a broad spectrum of cases, if the committee would like us to pursue those cases.

Senator **McClure**. Well, I do not want to do too much of our work in executive session. I think the public is entitled [157] to know, but I do hope we have enough executive sessions so that we can be a little less careful in framing our questions and answers and, therefore, perhaps, get a little closer to the truth. I do not know that anybody is obscuring the truth; it is just that when you are so sensitive about the information, it is sometimes very difficult to get the real facts on the record.

Thank you, Mr. Chairman.

Senator **Mathias**. Senator Inouye?

Senator **Inouye**. Mr. Chairman, I wish to follow my distinguished colleague's questioning. I would like to be a bit more specific, instead of dealing with hypothetics.

The matter I am about to bring up is in the public domain, and I do not think anything can be done to destroy this man's reputation. On January 7, 1980, John Jenrette, former Congressman from South Carolina, was being recorded. He was with, I think, two Abscam FBI agents. And in that conversation, Congressman Jenrette indicated that he felt that maybe Senator Strom Thurmond could be called upon to assist these Arab investors, but he said he would be, quote: "Damn expensive." This tape was then turned over to the U.S. Attorney, Mr. Ruff. Mr. Ruff, in turn, called up Mr. Heymann, who was then Assistant Attorney General and head of the Criminal Division at the time of the Abscam investigation. And I quote his testimony here:

> [158] Mr. Heymann. The first time I think I learned of Jenrette's statement about Senator Strom Thurmond was when United States Attorney Ruff called me up and said, "I want to go ahead and offer in some way an opportunity for Senator Thur-

mond to come in and take money, because we found this in the record, and we think we ought to follow this through."

Mr. Heymann continues:

> And I said, "Go ahead". This is the first time I heard of it. So for me, the time—within 15 minutes of the time the phone rang, I said yes.

Were the guidelines applied in this case? We are dealing with the President pro tempore of the U.S. Senate, the chairman of the Judiciary Committee, a man of impeccable credentials.

Mr. REVELL. Senator, you are also dealing with the Justice Department and not with the Bureau. I can assure you that there was a great deal more discussion and consideration of that particular situation within the FBI than what you just quoted as within the Justice Department. I know that Phil Heymann would probably agree that the situation was primarily under the control of the FBI. We would consult with the Department, including Mr. Heymann, and with the prosecutors, and get their concurrence, but whether to proceed or not was essentially a function of the FBI based upon, in that instance, the final [159] determination of the Director, and in other instances involving the Congress, upon specific representations, to proceed with a meeting.

Now, we would have never said: "Go ahead and offer him the money." That never happened. There were always the conditions, the very carefully crafted conditions, to insure that indeed, a Senator like Senator Thurmond or a Congressman would not be brought into an unknowing situation and offered money without a clear understanding that he was expected to commit a criminal violation to earn that money.

Mr. Heymann is a very distinguished attorney, and he certainly, I do not think, meant to be cavalier or flippant in that situation. We worked with him very closely. I do not want to leave the impression that that represents the decisionmaking process that was involved on our side of the house.

Senator INOUYE. I would like to now touch upon your testimony in which you assured us that your agents were carefully selected and carefully instructed. I now quote from the transcript of the due process hearing in the U.S. District Court, Eastern District of New York, in the case of Congressman Lederer. Anthony Amoroso is being questioned by Mr. Buffone:

> Were you ever instructed on the law of entrapment?

If [160] you recall, in your testimony, you indicated that all of your agents were made aware.

> Probably at sometime during my 17 years.
>
> *Question.* Let us forget about your 17 years. Were you instructed about the law of entrapment as regards the Abscam investigation?
>
> Answer. No.
>
> *Question.* Mr. Jacobs never instructed you?
>
> Answer. No.
>
> *Question.* Mr. Good never instructed you?
>
> Answer. No.

Were agents instructed about the law of entrapment?

Mr. REVELL. Yes, they were, including Agent Amoroso, and he later acknowledged that he responded inaccurately, because we went back and recited to him the instructions he had received, the undercover seminars he not only attended but had instructed. Regarding various undercover techniques: the specific instructions he had received not only from the strike force attorneys, but through the Bureau from the Department. I do not know—I cannot put myself in his place—he had been on the witness stand for almost, literally, weeks, and perhaps he did not carefully consider that response. But he was instructed, he was given guidance in each specific situation when he went into an undercover scenario, and he even received, as you recall, telephone instructions from the attorneys from [161] time to time, indicating he was either going too far, or he had not gone far enough. So he received instructions during the course of the particular undercover scenario.

Senator, I cannot explain that particular lapse on his part. All I can state is, he did receive specific instructions, he had been instructed during his career, and during the course of Abscam itself.

Senator INOUYE. And you clarified this with Mr. Amoroso after the trial?

Mr. REVELL. Yes, sir.

Senator INOUYE. Soon after the trial?

Mr. REVELL. As soon as we found out about it, yes. I did not have to; Judge Webster did.

Senator INOUYE. I now wish to quote from the official transcript of the June 25, 1981, due process hearing. This in the matter of Senator Williams. It is in the same court. This time, the attorney is Mr. Koelzer, and the witness is once again Mr. Amoroso.

> *Question.* Now, you have certain procedures that Bureau Headquarters outline had to be followed in undercover cases?
> Answer. No.
> Isn't that true?
> No.
> It is not true at all?
> [162] No.
> I am talking about all cases.
> No.

What did he mean that he had no instructions?

Mr. REVELL. Well, we had no guidelines at that time. The guidelines had not been issued. I think he was trying to get across that the Attorney General's undercover guidelines did not exist; therefore, we were not complying with nonexistent guidelines. I certainly do not believe——

Senator INOUYE. What were they complying with?

Mr. REVELL. He was complying with then-existing internal rules and regulations. They have been turned over to your co-counsel. According to the statements of both the Attorney General and the Director at the time the guidelines were issued, they by and large incorporate, although with greater detail, the existing policies and procedures that were in place at that time.

I think that was a careless answer after, probably, a difficult and long time at testimony. It certainly did not reflect the situation.

Senator INOUYE. My last question may take you a while to respond to, but I would like to ask it for the record.

Mr. REVELL. Yes, sir.

Senator INOUYE. I do not think any of us here can respond to an inquiry as to how Abscam came about. We have been told [163] that it was originally an operation to recover stolen art goods or stolen money certificates, and somehow, somewhere along the lines, it evolved into Abscam. I would like to know how this evolution came about, when the decision was made, and why it was made, and did it go through this committee that you speak of?

I would like to further know whether at that time, you had this rule that you refer to that no operation may be approved for more than 6 months, and that whenever an operation in which the scenario changes significantly, the committee has to review it. Were these steps taken?

Senator MATHIAS. Before you respond, we have just a few minutes left on the vote, so we will recess for 10 minutes.

[Short recess.]

Senator MATHIAS. The committee will come to order.

Mr. Revell, would you like the reporter to read back Senator Inouye's question?

Mr. REVELL. I believe I still have it, unless he wants to have it repeated.

Senator, the subject of Mr. Mullen's testimony tomorrow is the Abscam case, how it was controlled, directed, approved at the Headquarters level. His statement addresses at length the evolution of the case, and his testimony will involve those issues. On Thursday, Special Agents Wilson and Good, who were directly involved—Agent Good in the field supervision, **[164]** and Agent Wilson in the Headquarters supervision—will be testifying about those same areas. If at that time, the record is not sufficiently clear, I would be glad to obtain for you any information that you believe should be either expanded upon or gone into in any additional detail.

At this point, although I am generally aware of the details of Abscam, I am not your best witness on that, because most of that happened before I was directly involved.

Senator INOUYE. I think it would be well if we wait until tomorrow.

Thank you.

Senator MATHIAS. Senator Rudman?

Senator RUDMAN. Thank you, Mr. Chairman.

Mr. Revell, I understand the purpose of your testimony today is really limited to giving the committee a full understanding of the guidelines under which you operate and play a key role. In that light, I really only have one question. I think the guidelines are relatively clear. They do have some inconsistencies, like any guidelines; the simpler they are, the easier they will be to enforce and conform to.

I have to come back to the statement that I read into the record earlier, and I will not read the entire statement, but the Attorney General's Guidelines published on December 2, 1980, had one key line that said that—I had actually better **[165]** read a sentence above it to make it clear—"That individuals and organizations be free from law enforcement scrutiny that is undertaken without a valid, factual predicate." Those are not just words. They mean something. They are really terms of art, if you want to look at various search and seizure cases, both in State and Federal courts. And so the extent that that is still enforced—as I expect it is—I want to just go over guideline J with you, which cocounsel Wheeler and yourself have been discussing. There is something in there that is just not understandable by me, and maybe you can explain what it means, but if you cannot, I would like you to explain how anybody could operate under it.

I am referring to authorization of the creation of opportunities, which really is the key of what we are discussing in this whole discussion, and paragraph 1 says, "Entrapment should be scrupulously avoided. Entrapment is the inducement or encouragement of individuals to engage in an illegal activity in which he would otherwise not be disposed to engage." And we all know the various court holdings on entrapment, so I do not suspect we have to go into that.

But then you get down to paragraph 3, that says this: "Under the law of entrapment, inducements may be offered to an individual even though there is no reasonable indication that that particular individual has engaged or is engaging in **[166]** the illegal activity that is properly under investigation. Nonetheless, no such undercover operation shall be approved without specific, written authorization of the Director, unless the Undercover Operations Review Committee determines insofar as practical that either"—and here is my problem with that first paragraph—"there is a reasonable indication, based on information developed through informants or other means," et cetera, et cetera.

Now, what I do not understand is, it starts out by saying that, "Under the law of entrapment, inducements may be offered to an individual even though there is no reasonable indication," and then sets as a criterion for you down below that you have to have a reasonable indication. That just does not make good sense. I would like you to explain it to me.

Mr. REVELL. It is departmental policy that we not pursue these cases to the limit the law would allow under the Supreme Court's decision in the *Hampton* case on the law of entrapment. The Department has a more restrictive policy.

I would like to explain that one situation which would require the Director's approval. It concerns those circumstances in which we would make an inducement to an individual with no information of previous, current, or proposed criminal actions. That is a hypothetical situation, but it is in the guidelines for **[167]** those extraordinary cases—I am talking about cases such as the assassination of the President, or a nuclear incident, in which we may have very sparse information about a group of individuals, not a specific individual, and it is of such national importance that we have to do something. This would allow us to selectively approach someone to determine if in fact there was anything transpiring in that type of situation. That is the level we are talking about. It allows us to do, on a very, very select basis, that which would be imperative under those type of circumstances.

Senator RUDMAN. Well, what you have now given as an answer makes very good sense, and so long as you are enforcing it, that is fine.

Mr. REVELL. It has never occurred. Since the promulgation of the guidelines, we have never used that particular provision.

Senator RUDMAN. Don't you think those guidelines could be improved by essentially fleshing out those guidelines in that area to the extent that you just answered, because they really do leave a wide-open door, you would agree, taken at face value.

Mr. REVELL. I think at the time they were issued Attorney General Civiletti did give some explanatory comments about that particular provision, and, of course, we are very happy to explain our interpretation. I think anyone would [168] understand that we need to be able to react in certain, very select cases, to the limit the law would allow.

Senator RUDMAN. The second level of questioning I have which relates tangentially to that relates to a statement contained here in some of your informant guidelines and so forth. "In determining the suitability of an informant, the FBI must consider, among other things, the availability of means to verify the information he provides."

If, in testimony that will be adduced at these hearings over the next several weeks or months, there is evidence that bribes were authorized, based on informant or middleman information, with no corroboration whatsoever, would you say that that is inconsistent with what is contained in that statement and in the guidelines themselves?

Mr. REVELL. No corroboration at any point, before the money is paid?

Senator RUDMAN. Correct; none. No corroboration. Just the unsupported statement of a middleman or an informant. And we will not even go to the character of the informant or the character of the middleman, because that is a whole different level of entry here. I am talking about uncorroborated, unverified information from an informant or a middleman, period, that would then lead to the authorization under the bribery guidelines, a bribing offer to a high public official within the meaning of your definition. Would you consider that [169] to be inconsistent with——

Mr. REVELL. To a bribe offer or a bribe payment?

Senator RUDMAN. A bribe offer.

Mr. REVELL. If a bribe offer was extended by an undercover agent, and he had not ascertained through preconditions or during the course of that meeting that the individual knew why he was there, knew the criminal nature of the activity which he was being asked to engage in, acknowledged the role he was expected to play, acknowledged the amount of money he was to receive, and that in fact, he intended to carry out that illegal purpose, then it would not be an appropriate offer, in my view.

Senator RUDMAN. Fine. And to take it one further step, if in fact, all of the same circumstances we have just discussed, the bribe was authorized by whomever was authorized to make that decision, the bribe was authorized, but for one reason or another, it never happened, you then would also agree, I assume, that under that same circumstance, that authorization should never have been executed?

Mr. REVELL. No, sir. That is an entirely different situation.

Senator RUDMAN. That is different?

Mr. REVELL. Yes, sir.

Senator RUDMAN. Would you explain why?

Mr. REVELL. All right. The authorization is [170] always contingent upon the satisfaction of those elements that we have testified to and outlined. That bribe offer is not, "Walk into the room and pay Senator X $50,000." Senator X is presumed to be innocent until we have ascertained all of the factors which establish the bona fides of the situation—that he knows why he is there, that he is willfully engaging in conspiratorial conduct to commit a violation of the Federal law, and that he is willingly accepting the money, giving us guarantees as to what he is to do. Up until that point, the authorization is simply a contingent authorization. It cannot be paid unless those circumstances are met.

Senator **Rudman**. But Mr. Revell—and I assumed that would be your answer—now, let me come down to my final question. That is a little bit like the proverbial loose cannonball on the pitching deck, because what you are saying is you are making a contingent authorization. You say, "If that fellow Rudman, from New Hampshire, meets all of these qualifications, take him and offer him a bribe," with no other information upfront other than some "source" saying, "I think the fellow might take a bribe." I do not think that is what these guidelines really mean, Mr. Revell.

Mr. **Revell**. It is more than "I think." It is that he will take a bribe, or that he has in the past and will again in the future. That is exactly the way we interpret the policy. The opportunity for illegal activity is structured so [171] that there is a reason for believing that persons drawn to the opportunity or brought to it are predisposed to engage in the contemplated illegal activity, and until we are satisfied that that is the case, then there will be no bribery; there will be no payment.

Senator **Rudman**. How is it authorized?

Mr. **Revell**. It is authorized only on the conditions being met. That is the ultimate factor in this whole thing.

Senator **Rudman**. All right. Now, let me ask a final question. Who, then, determines after the Director—let us say it was at that level. The Director made the authorization and it is contingent on all these things being met. Who makes the determination that the contingencies have in fact been met?

Mr. **Revell**. The agent has the authority to proceed once those contingencies have been met. You are aware that there were certain mechanisms available. Let us say he made a mistake, and all of the elements were not met. Then, what would happen is that there would be no prosecution because we would not have demonstrated that there was a mens rea—that there was guilty knowledge on the part of the individuals as to what he was doing.

So even if there was a mistake at that point on the part of the agent, and he exceeded his authority, there are [172] checks and balances within the process. There will be no prosecution authorized, or certainly, no proof of intent.

Senator **Rudman**. Wouldn't it be more consistent with your general procedures which I am familiar with in the Bureau, to satisfy all of these contingencies first and then go to the Director and essentially have a mini probable cause hearing in the privacy of his own office and then authorize them to go the full stroke of the pump?

Mr. **Revell**. Senator, it would probably insure that we never had an innocent person come to a meeting, but it would also insure that many of the guilty would not be there, either.

Senator **Rudman**. Well, there, of course, comes the whole balance of the equity that we are concerned with.

Mr. **Revell**. Yes, sir, absolutely.

Senator **Rudman**. Thank you.

Senator **Mathias**. Mr. Revell, on page 13, you refer to onsite reviews of sensitive and extended operations, and you say they are "selectively conducted." What is the element of selectivity? What triggers an onsite review?

Mr. **Revell**. Several things, Senator; primarily, management discretion on the part of either myself or a Deputy Assistant Director, that an operation is so extensive as to require an onsite management analysis or an audit. And we do [173] have certain audit requirements that you are aware of. If the operation exceeds $50,000, we must submit an audit to the Attorney General and to the oversight committees. We have an ongoing——

Senator **Mathias**. But the onsite review is different from the audit.

Mr. **Revell**. That is correct. It is, in essence, an operational analysis to assist the SAC in the management of that operation. It is conducted by agents from the substantive sections, either white collar, organized, or personal property sections, and the Undercover and Special Operations Unit. They are sent out to assist the management in that office, in analyzing and appraising the ongoing undercover operation, improving it, or, of course, in some situations, determining that it should be shut down. They then make their recommendations to me and to the agent in charge.

Senator **Mathias**. But that means somebody from Headquarters, somebody out of Washington, goes to wherever the site of operations is——

Mr. **Revell**. Yes.

Senator **Mathias** [continuing]. And it is a subjective judgment as to whether or not it needs attention. Either there is a lot of activity or no activity. Would that be an example of why you might send out someone from headquarters?

Mr. **Revell**. Well, sir, there is an ongoing process that does not require onsite reviews. There are reports that [174] are submitted, depending on the level of activity, on a very frequent basis, at least on a monthly basis, reporting the various elements that must be reported. For instance, bribe offers can only be given by prior Headquarters approval, based on documentation. There is a reporting requirement on expenditures. There is a reporting requirement on accomplishments. This is an additional technique that we use, in those cases that are extremely complex or of long duration, to assure ourselves that the resources and the personnel are being efficiently and effectively utilized, and that we are using the benefit of experience in other operations to make sure that our goals are being accomplished and that the agent in charge is being provided with that type advice and expertise.

Senator **Mathias**. Now, the audit that you just mentioned deals with the financial outlays and the fiscal side, does it not?

Mr. **Revell**. That is correct, sir.

Senator **Mathias**. And who determines, both in the case of the audit and the onsite review, whether the guidelines are being observed? Is that a separate judgment? Is that included as a part of both the audit and the onsite review?

Mr. REVELL. The audit is conducted by our office of Program Evaluations and Audits of our Inspection Division. It is completely separate and apart from my division. I have no control over it. They review the totality of the financial [175] aspects and make a separate and independent report that I receive. It also goes to the Director and to the Department.

We have an ongoing inspection process and the undercover operations are subject to these operational inspections, which include, adherence to rules and regulations, including the guidelines; we have our ongoing management review process. So there are numerous instances of both first line and oversight supervision, as well as compliance inspections and audits.

Senator MATHIAS. Going back for a minute to the Undercover Operations Review Committee, the authorization for a bribe to be offered can be approved by the Undercover Operations Review Committee, right?

Mr. REVELL. Not the specific bribes, but the particular undercover scenario.

Senator MATHIAS. The scheme.

Mr. REVELL. Yes, correct.

Senator MATHIAS. Fine. What is the Director's role at this point? Does he, then, have to authorize the specific bribe?

Mr. REVELL. There are levels of approval. I believe we have made that material available to counsel. The approval process is twofold. One is the level of official and two is the amount of expenditure. As far as a federally elected official or [176] a high-level executive or judicial official is concerned, the Director's approval is required.

Senator MATHIAS. Could the Director authorize the scenario? Could the Director authorize the whole scheme independent of the Review Committee?

Mr. REVELL. The guidelines do not allow, except in emergency circumstances, the bypassing of the Undercover Review Committee. There are certain emergency provisions that would allow bypassing the Committee process, but then it must go back before the Committee for an affirmation.

Of course, the Committee acts as an advisory committee, and the Attorney General and the Director, I would suppose, under certain circumstances, could agree to bypass that process if they felt the need to, but I know of no circumstance in which that would be done.

Senator MATHIAS. Do you have any statistics on the relative frequency of the different justifications for offering bribes to persons as to whom there is no reasonable indication of involvement in previous corruption—whether it is specific authorization of the Director, whether there is indication of involvement in similar illegality, or whether the opportunity is structured to avoid entrapment?

Mr. REVELL. No, sir; I do not. There have not been that many cases. We have only been [177] operating under the guidelines now for 18 months. In that time, we have had less than 20 undercover operations involving official corruption. It would require a case-by-case review. We do not have this statistic available, but, if the committee felt that it was pertinent, we could undertake that review.

Senator **MATHIAS**. Senator Huddleston?

Senator **HUDDLESTON**. Thank you, Mr. Chairman.

Mr. Revell, in your opening statement, you emphasize that undercover operations are lawful. I think that has been established and confirmed by the courts. But would you agree that if an undercover operation included procedures that would be entrapment, or included inducements to innocent individuals to entice them into a criminal situation—inducements that were not justifiable in the world of reality—that then, they would not be legal.

Mr. **REVELL**. I believe I covered that in my statement, Senator, when I said that even a lawful operation can be conducted in an impermissible fashion. The law of entrapment and the due process decisions require that we not engage in entrapment, and that we not make an inducement which is unreasonable.

Senator **HUDDLESTON**. Now, one of the things that seems to strike me here is that while a great deal of consideration and concern is given before the initiation of a particular [178] undercover operation, I think both the guidelines and practice of the agency have indicated that they are not really entered into very lightly; a lot of thought is given to a good many things. But, once an operation begins, and it is set up for a specific purpose, as indeed Abscam was, and is set up to deal with an area in which there is known to be a considerable amount of illegal activity, then it seems to me there is not quite as much control, or even concern, about what might be brought into that dragnet of people who have no record, no known record of criminality. Now, I understand the guidelines as they relate to the extension or expansion of an operation, but we have seen, for instance, in the Abscam case, the situation where, in fact, innocent people and people who are not inclined to accept any bribes or unlawful payments have been carried all the way to the final point, the point of actually producing the cash, and it was stopped at that point—I grant that. As I said before, that safeguard is always there. But it does disturb me a little bit that people who are so far removed from any kind of criminal activity could get that far within the network after a program has been set up to deal with some other kind of criminality.

Mr. **REVELL**. Well, of course, Abscam was redirected appropriately; it was reviewed, and the scenario was changed under the policies and procedures at that time. We are not talking about somebody walking in off the street. The [179] original middleman in Abscam, as you will hear in the testimony to follow, was Angelo Errichetti, a State senator, a mayor of one of the major cities in New Jersey, and a very powerful political individual within the State of New Jersey, who had considerable political influence. So it was not somebody walking in off the street and saying, "FBI, you should go and look at all these corrupt politicians." It was a person within that milieu who dealt with political issues and public figures who first led us to the allegations of public corruption.

Senator **HUDDLESTON**. And you are confident in your own mind that the proper procedures were followed——

Mr. **REVELL**. Yes, sir, and I believe——

Senator **Huddleston** [continuing]. Procedures to limit the risk and the cost were in place and were followed as this thing began to reach out and get the other people.

Mr. **Revell**. Senator, I believe that, although we all know the fragile nature of the public official's position. I think if we look at this case—there was no money offered to any public official who did not indicate beforehand that he was interested and wanted to take it——

Senator **Huddleston**. It came very close.

Mr. **Revell**. Well, you know——

Senator **Huddleston**. As a matter of fact, in my judgment, that offer was actually made—if you tell somebody that you [180] have got the money to pay, and you have got a particular problem, if that is not an offer, that is getting awfully close to it.

Mr. **Revell**. Well, the fact that there was money there was obvious from the point of the meeting, but it was not close to being paid until certain representations——

Senator **Huddleston**. No. I understand it was not going to be paid until he agreed he would accept it——

Mr. **Revell**. Right. There was no quesiton that they knew that there was money there, in each of those situations, by the time they got into the subject matter of the meeting.

Senator **Huddleston**. Right. So it may be a question of semantics or description as to whether or not there was an actual offer.

Mr. **Revell**. But there has been some play——

Senator **Huddleston**. From a legal standpoint, it probably was not an offer, but from the standpoint of acquainting that individual with three facts—"We have got money; we have got a problem; if you will help us, you can have the money"——

Mr. **Revell**. I think you ought to look at the nature and character of these influence peddlers. These were not sleazy con men. These were people—a lawyer in a law firm closely associated with the city council and with congressional figures from the eastern Pennsylvania area; the mayor and a State senator; a person with direct access to very high level [181] politics in the State of New Jersey. These were not individuals who were dealing in a sham operation.

Senator **Huddleston**. I do not have any question about that, as far as those individuals are concerned.

Let me ask you this. You said you are aware of the fact—and this is, I am sure, inevitable in probably even all the grand jury investigations or whatever—but just the fact that the FBI is investigating a person, or that a person has been the target of an effort, that is damaging to that individual, no matter how innocent he might be, or how far he might be removed from that. Is that taken into account when you figure the costs of any kind of undercover operation and the individuals that may be involved?

Mr. **Revell**. Certainly. It is intangible; it is very difficult to measure. But the reputation of a public official is a factor that we are well aware of. I have been myself castigated at times in the newspapers. I know how uncomfortable that is. I do not have to run for elected office, so perhaps I can stand it more than others. I know the Director has been criticized and the Attorney General.

We are public officials. We are very well aware that false information, rumor, innuendo, and allegations can cause damage to reputations, and we certainly want to do everything we can to prevent that. On the other hand, we do know that it is our responsibility to seek out those individuals who would [182] sell their public office. If we receive allegations from apparently credible people within the sphere of influence, what would we do if we did not pursue them? How would we fulfill our responsibility if we had individuals on this level who came to us and said that Congressman Y will sell his office and implies that he has sold his office, and we do not pursue it?

That is the dilemma we face in pursuing these very sensitive cases.

Senator **Huddleston**. Well, now you used the statement there that I think brings up a question of policy. You said it is your responsibility to seek out——

Mr. **Revell**. When we receive the information.

Senator **Huddleston**. OK. That is a caveat that is quite important.

Mr. **Revell**. No, no, we are not going on a fishing expedition.

Senator **Huddleston**. As some judge, I think, termed it, you are not "testing the virtue of people without some reason."

Mr. **Revell**. No. To seek out when we receive information. I am glad you brought that up, because indeed, we have testified, the Director has testified, that we are not testing the virtue of the members of Congress. That is not our role, and we do not seek that role. The problem is, what do we do [183] when we receive allegations, and how do we pursue those leads, and what would happen if we did not. That is the dilemma we face.

Senator **Huddleston**. Somebody boiled it down as to whether or not it was your responsibility to find the corrupt or the corruptible.

Mr. **Revell**. I have heard that argument.

Senator **Huddleston**. It is not original.

Back to this cost situation, now, you do of course recognize that many—or some—undercover operations have a tendency to increase the criminal activity that you are trying to deal with. For instance, a fencing operation may very well cause an increase in burglaries, when the burglars learn that there is a ready market for their product. Is this taken into account, and how is it dealt with, so that innocent people there again are going to lose some property because of this?

Mr. **Revell**. We do not set up a fencing operation unless it is in an area where there is high volume of theft activity. So we are not setting up a unique opportunity; we are simply setting up an additional opportunity.

There have been some fairly recent studies conducted which indicate that we have not, through any of these fencing operations, increased the overall crime rate in a particular area. After the fencing [184] operation, the rate has decreased dramatically.

One of the cases that your counsel are going to examine is a case called Operation Lobster. It has to so with armed hijacking by members of organized crime in the New England area, There were a substantial number of cases ongoing at the time of the operation. After the completion of the case and the arrests, it was almost reduced to zero. So I think there have been some dramatic impacts you can test in that arena.

Now, the problem with consensual crimes, crimes that are concealed—and certainly, bribery of public officials would fall in that area, as well as narcotics—is that you do not know what crimes are being committed. The public does not know when they are being sold out. They do not know when a State legislator votes because he has been paid to vote a particular way, or that a building inspector looks the other way when he sees materials that are less than that which specifications call for. These are unseen, undetected crimes, and will remain so unless law enforcement has a means, a legitimate means, of interdicting the ongoing criminal activities which are not within the public view. Unless you have a building collapse, you do not know that somebody has shaved the specifications. In the Oklahoma case, you do not know that the county commissioners have been getting a 50-percent kickback for materials that were never delivered until we intercept that particular operation and find [185] out the ongoing activities, and then develop the evidence to take it into court.

Senator HUDDLESTON. Some operations, I would imagine, dealing in some types of crime, even raise the possibility of creating additional violence.

Mr. REVELL. The guidelines are very specific; we are very specific. We avoid violence at almost all cost. There is some risk of violence, as I indicated earlier, in any law enforcement activity, but we always attempt to minimize that. We will not allow any undercover agent or any informant to participate or in any way facilitate a violent action. They are specifically directed to try and oppose, through whatever means is available to them, any type of violent criminal activity. That is an area that we are very cognizant of, and we take very strong measures to insure that our position is not only well stated, but that it is unequivocal.

Senator HUDDLESTON. Thank you.

Senator MATHIAS. Senator Rudman?

Senator RUDMAN. Mr. Revell, I just want to follow up on one of the questions that I asked. Getting down to the bribery guidelines themselves, could you explain to the committee, so we will have full understanding—I want to get just some flavor of what is required. When you go to the Director in hypothetical case, to authorize a bribe to a high public [186] official, within the meaning of your guidelines, tell me the character of the information that you then give the Director upon which he must base his decision either to authorize or to reject?

Mr. REVELL. If we are going to the level that would require going to the Director, then he is going to want to know the same type of information that is called for in the guidelines. He is going to want to know the fact situation: how did we get the information, what was the source, what is the credibility of this source, is he an informant, is he someone who came forward to us, have we corroborated or not corroborated the information, what additional evidence do we have, what investigation have we done up to that point. He does not get a blank sheet of paper and say, "Authorize a bribe." He has a tremendous amount of information about all of these elements, some of which we will not have totally satisfied at that point. Again, these bribe situations in many instances are going to be contingent authorizations.

Senator Rudman. Well, if I understood your prior answer, they have a large contingency built in them anyway.

Mr. Revell. Correct.

Senator Rudman. As I understand it, there is a whole series of things which you elicited about 20 minutes ago in which those are definitely contingent. In other words, those [187] do not have to be proven to the Director because his decision, as I understood your previous answer, was contingent on certain things happening such as——

Mr. Revell. But they may have already happened, Senator. If they have already happened, that will be reflected——

Senator Rudman. But they may not have happened.

Mr. Revell. Right. But if they have happened, and we have the documentation, and the prosecutors are satisfied, there may be only an exchange of money. I am not saying that the only time that we would pay a bribe would be when we have gone through all of these factors. All the previous activity in the case, which has been reviewed and documented and evaluated, would determine the predisposition, the knowledge of the criminal activity proposed, and so forth.

Senator Rudman. Well——

Mr. Revell. If that was available, it would be before the Director when he made his decision.

Senator Rudman. Mr. Revell, who makes the decision in the Bureau at this time to go to the Director and make that request?

Mr. Revell. I do.

Senator Rudman. You make that decision?

Mr. Revell. Well, I make it upon representation from the [188] field.

Senator Rudman. I understand. But the final decision to go to the Director is in your hands; that is your responsibility.

Mr. Revell, if one of your agents in the field said to you that they had information that a certain Member of Congress probably would accept a bribe, and it came from a source that did not know the person personally, but moved within the general circles that he moved in, would that be enough for you to go to the Director?

Mr. Revell. No.

[The following material was subsequently received for the record:]

Exhibit 8

U.S. Department of Justice,
Federal Bureau of Investigation,
Washington, D.C., February 22, 1983.

Hon. Charles McC. Mathias, Jr.,
Chairman, Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, U.S. Senate, Washington, D.C.

Dear Mr. Chairman: I am writing to express my disagreement with a portion of the Committee's preliminary staff report.

During my testimony on July 20, 1982, Senator Rudman asked me to describe, and I quote from the transcript, "the character of the information" provided to Director Webster in a hypothetical case when the Director was deciding whether to authorize a bribe payment to a public official. As requested, I then detailed the information the Director requires in these instances.

The report states that my answer described the information contained in memoranda submitted to the Director. Senator Rudman asked me about information, not memoranda, and my response encompassed oral as well as written information.

The report, on page 44 of the section on Targeting, then compares my answer to Senator Rudman's question about a hypothetical case with the information provided solely by memoranda to the Director in the ABSCAM case, and comes to the conclusion that my testimony was "far from accurate." Senator Rudman did not ask me about ABSCAM; my statement was an accurate response to his question. Furthermore, in ABSCAM the Director was provided with information through oral briefings, video tape reviews and oral consultations with Departmental officials, as well as written memoranda.

I respectfully request that the Committee correct its preliminary report and/or include this letter in its final report.

Sincerely yours,

OLIVER B. REVELL,
Assistant Director,
Criminal Investigative Division.

U.S. SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, D.C., February 23, 1983.

Mr. OLIVER B. REVELL,
Assistant Director, Criminal Investigative Division, Department of Justice, Washington, D.C.

DEAR MR. REVELL: I have received your letter dated February 22, 1983, which expresses your disagreement with a passage in the final report of the Select Committee on Undercover Activities.

I regret that I am unable to accommodate your request that the Select Committee's report be "corrected," or that your letter be included therein. As you know, the final report was filed with the Senate on December 15, 1982, and is now being printed at the Government Printing Office. Thus, even if it were appropriate to print your response to the report along with the report itself, it would no longer be possible to do so.

It appears from your letter that you believe that the Select Committee has misinterpreted your response to a question posed by Senator Rudman at the hearing on July 20, 1982. The letter's clarification of your response will, I am sure, be helpful to those reviewing the transcript of this hearing. Accordingly, I think it would be most appropriate to reprint your letter in the hearing transcript, immediately following the exchange with Senator Rudman. Assuming that this is satisfactory to you, I will see to it that your letter is included at that point.

With best wishes,

Sincerely,

CHARLES McC. MATHIAS, Jr.,
U.S. Senator.

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., March 4, 1983.

Hon. CHARLES McC. MATHIAS, Jr.,
U.S. Senate,
Washington, D.C.

DEAR SENATOR MATHIAS: Thank you for your letter dated February 23, 1983. While I regret it is not possible for you to accommodate that which I requested in my letter of February 22, I deeply appreciate your willingness to reprint that letter in the hearing transcript immediately following the exchange with Senator Rudman.

Sincerely,

OLIVER B. REVELL,
Assistant Director,
Criminal Investigative Division.

Senator MATHIAS. Senator Inouye?

Senator INOUYE. Thank you.

In the statement made by Mr. Heymann before the Congress, he said this: "I know of no case where an agent has gone out and tried to persuade a political figure to take a bribe, which would be the equivalent of trying to persuade him to take stolen goods." Is that a correct statement?

Mr. REVELL. An agent?

Senator INOUYE. Yes.

Mr. REVELL. As far as I know, Senator, that is a correct statement.

Senator INOUYE. Why did you say "an agent"?

Mr. REVELL. Because there was an allegation that Mel Weinberg coached Senator Williams. So if you were talking about [189] a cooperating individual or an informant, then I would have to clarify my response, but as far as an undercover agent or any agent, my response is no, that I know of no such situation.

Senator INOUYE. Keeping that statement in mind, would you say that the following document is consistent with that statement? On November 27, 1979, a meeting was held, relative to the matter concerning Senator Williams, and this meeting was attended by Mr. Puccio and many others. I am certain you are aware of this document.

Mr. REVELL. Yes, sir.

Senator INOUYE. You have just about every person who was involved in the strike force, the FBI, the U.S. Attorney's Office, et cetera, and the document goes on to say:

> Relative to the matter concerning U.S. Senator Harrison Williams of New Jersey, the following was decided: (1) It will be necessary to recontact U.S. Senator Williams in an attempt to obtain an overt action on his part regarding his sponsoring of some type of legislation, that is,,tax cover for titanium mine, environmental standards for titanium mine, and/or import quotas for titanium mine; (2) It was also suggested that attempts should be made to elicit from U.S. Senator Williams whether or not he wanted his shares hidden through discussions concerning reporting of personal taxes and official acts that he promised to provide. If the above information is obtained, prosecutors at the meeting felt that [190] they could prove Senator Williams was in violation of Title 18, Section 201 of the United States Code, and conspiracy to defraud the government.

This was held on November 11, 1979. The report was dated November 27. And if my memory is correct, the Abscam case against Senator Williams had been going on for about 10 months at that point.

Would you say that, here, you find the FBI trying to persuade a political figure to take a bribe?

Mr. REVELL. Senator, that is a very complex series of events which the court has attempted to unravel. There was not just one meeting; there were numerous meetings, including Senator Williams going to Miami to meet with the undercover operatives on the boat. There were a series of conversations in which various proposals were discussed and various——

Senator INOUYE. If I may interrupt at that point, would you say that from this memo, one would get the impression that they had no case against Williams at that time?

Mr. REVELL. I think you would have to ask the prosecutors, because in essence, I think they were trying to bolster what information they had, based upon a clear understanding that they believed that the Senator was, in fact, willing to use his office for illegal purposes, and to clarify that situation. Now, that is an interpretation on my part, and I think you would have to talk to Mr. Puccio and the [191] others involved, as to what their specific intention was.

Senator **Inouye**. Should that have made any difference to the agency, if one of the tapes had shown that the Senator clearly said, "No, no, no" four times?

Mr. **Revell**. The Senator clearly said, "No, no, no," to a specific cash payment. He did not say, "No, no, no," to the contining involvement in what he apparently expected to be a very, very lucrative operation that would result in substantially more than the payment that was being considered.

Senator **Inouye**. So you do not think that it is improper under your guidelines to try to go back and persuade a political figure to, as it says, here, elicit from a U.S. Senator or to recontact in an attempt to obtain an overt action on his part?

Mr. **Revell**. Senator, as you are well aware, there were a series of continuing contacts, many initiated by Senator Williams. So I think, although I did not participate in that particular meeting, that what they were trying to do is in essence determine if in fact he really was intent on engaging in a corrupt activity. If, in fact, he had not been, then I think the results would have been evident also. I do not think you can read into that that there was an intention to push him into a criminal act, but to simply try and clearly ascertain whether he was interested in committing a criminal act.

Senator **Inouye**. My final question, sir. I would like to [192] ask for clarification of your response to Senator Rudman. Am I correct that under the present guidelines, if Congressman X indicated on tape that I could be convinced to take a bribe, that would not be sufficient for an authorization to offer me a bribe?

Mr. **Revell**. Congressman X would have to indicate that he had information that you either had taken, or he had information that you would take, and then he would have to arrange for the meeting.

If he then said he would do that and that he would determine that you knew why you were coming, and so forth, then it might be sufficient to proceed. It would be judged upon the totality of the circumstances, and of course, the safeguards would be the same, as we have discussed, before there would be any exchange of money. A mere representation that you might be willing to take a bribe would not be sufficient, in my view, to have the direct confrontation.

Senator **Inouye**. Then, the decision made in the matter of Senator Strom Thurmond would be different today.

Mr. **Revell**. No, sir. There was no meeting with Senator Thurmond.

Senator **Inouye**. But the response was, "Go ahead."

Mr. **Revell**. Not on the FBI's part. There was never any authorization to approach Senator Thurmond on the part of [193] the FBI.

Senator **Inouye**. What is Mr. Heymann——

Mr. **Revell**. Mr. Heymann is talking about a discussion with Mr. Ruff. Mr. Heymann and Mr. Ruff do not authorize payments of bribes. The Director of the FBI does. And he did not.

Senator INOUYE. There is no relationship between the U.S. Attorney and the FBI in matters of this sort?

Mr. REVELL. Of course. We consult with them. We consulted with Mr. Heymann, and we certainly got their concurrence. But they could not tell us to whom we should offer a bribe, and they did not in this situation. We obtained their legal opinion and their concurrence, but they did not tell us to whom we should offer a bribe. That is within the discretion, in this instance, of the Director of the FBI or other officials—depending upon the level of the bribe offer. And there was no such authorization in that situation.

Senator INOUYE. Thank you very much, sir.

Senator MATHIAS. Are there other questions?

Senator HUDDLESTON. No question, but one observation that has just been developed there that I think is worth noting. In these situations where people are brought in on the basis of a very scant suggestion on the part of a middleman, in everyone of those cases, has that person been brought in by the middleman and not by an FBI agent?

[194] Mr. REVELL. Oh, yes. They are brought in by the middlemen. The agents do not go out independently, get a name, and then try to persuade someone to come to a meeting.

Senator HUDDLESTON. I think that is important, that you are authorizing, in effect, the middleman.

Mr. REVELL. We are not authorizing him. We are simply complying with his representation.

Senator HUDDLESTON. Well, you are, in effect authorizing him. You are letting him bring a person into the scene where you are going to——

Mr. REVELL. In that connotation, yes, but again, it is not on scant information. It is on specific information given to us by individuals who represent that they have dealt with and know an individual, and represent what the individual will do. They bring that individual to the meeting and then we go through the process.

Senator HUDDLESTON. I understand. But it is important, I think, that your standpoint is that you do not take this information and then say to an FBI agent, "OK, we have got this report. Go, see if you can get the fellow and bring him in." The man has to come in on the basis of his relationship to the middleman.

Mr. REVELL. And that is certainly a test of the credibility of the middleman, the fact that they do show up. [195] It is not a total test, but it is one more link in that final chain before any bribe offer will be extended.

Senator MATHIAS. Mr. NEAL?

Mr. NEAL. Mr. Revell, there are just two or three things, and I will ask for a very short answer, if you would, so we can get out of here, but I think the record needs to be made on this.

In the Undercover Operations Review Committee, if the representative of the Department of Justice disagrees with going ahead, then that is taken to the high levels of the Department of Justice?

Mr. REVELL. Correct. If any one of the four members from the Department objects to the operation, the operation will be put on a "hold," and the departmental representative will go to the Assistant Attorney General of the Criminal Division; there will be a discussion between the Director and the Assistant Attorney General, and a resolution made of the matter. If they cannot resolve it, then it goes to the Attorney General for resolution.

Mr. NEAL. OK. Second, the guidelines do allow undercover agents or informants to pose as attorneys, priests, media representatives. Now, I recognize you have got to go through the approval process, and those are sensitive circumstances.

Mr. REVELL. Correct.

[196] Mr. NEAL. But the guidelines do permit an undercover agent to pose as an attorney, to actually receive confidential information, perhaps give legal advice, and so forth, if that is approved.

Mr. REVELL. If it goes through the approval process called for in the guidelines, yes.

Mr. NEAL. Now, then, you say the one problem here is the elaborate approval process to institute an operation. Then, when you come to individuals as to authorize a bribe, you resort to some other guidelines, that is, the bribery guideline.

Mr. REVELL. Correct.

Mr. NEAL. And you are outside of the undercover guidelines, in the main. You are into another set of guidelines called the bribery guidelines. Mr. Revell, we have not seen the bribery guidelines. We have asked for those. My recollection is that at this point, you have decided in your wisdom not to give us the bribery guidelines. We will take that up with you.

Mr. REVELL. I might point out that when you get into the area of law enforcement operations, if too much is on the public record, then you have to change the operation. So I do not think it is a matter of not wanting the committee to have it, but protecting it from dissemination which would require us to change those guidelines.

[197] Mr. NEAL. Yes, well, I have already said that you have been cooperative with us, so thank you.

Senator MATHIAS. Just one final question, and then I think we are ready to adjourn. But let me just get in my own mind what would be the worst case. Let us say you had a middleman who came in and said that Commissioner Rainbow would accept a bribe, even if the middleman has made such representations about Mr. Eveningstar and Mr. Daybreak, and has been shown to be wrong in the past; and even if an FBI check shows that Commissioner Rainbow is clean as far as the record shows—he could still be invited to a meeting where a proffer could be made?

Mr. REVELL. He could be, under the guidelines, invited to a meeting. The likelihood, I think, is that he would not be under those circumstances. But the question was, under the guidelines, could he be, and the answer is yes.

Senator MATHIAS. I am asking for the worst case that it could be possible.

Mr. REVELL. Yes, sir, that is correct.

Senator MATHIAS. Fine. If there are no further questions, then, the committee, Mr. Revell, wants to thank you, and Mr. Ricks, for your long and patient testimony here today. We appreciate the time you have spent with us and your answers to the many questions that have been propounded to you.

We will stand in recess until the hour of 10 o'clock [198] tomorrow morning.

[Whereupon, at 4:35 p.m., the select committee was adjourned, to reconvene Wednesday, July 22, 1982, at 10 a.m.]

EXHIBIT 1

Office of the Attorney General
Washington, D.C. 20530

ATTORNEY GENERAL'S GUIDELINES ON FBI UNDERCOVER OPERATIONS

The following guidelines on use of undercover operations by the Federal Bureau of Investigation are issued under authority of the Attorney General as provided in 28 U.S.C. 509, 510, and 533. They are consistent with the requirements of the proposed FBI Charter Act, but do not depend upon passage of the Act for their effectiveness.

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RESERVATION

INTRODUCTION

The FBI's use of undercover employees and operation of proprietary business entities is a lawful and essential technique in the detection and investigation of white collar crime, political corruption, organized crime, and other priority areas. However, use of this technique inherently involves an element of deception, and occasionally may require a degree of cooperation with persons whose motivation and conduct are open to question, and so should be carefully considered and monitored.[1]

DEFINITIONS

An "undercover employee," under these guidelines, is any employee of the FBI -- or employee of a federal, state or local law enforcement agency working under the direction and control of the FBI in a particular investigation -- whose relationship with the FBI is concealed from third parties in the course of an investigative operation by the maintenance of a cover or alias identity.

An "undercover operation" is any investigative operation in which an undercover employee is used.

A "proprietary" is a sole proprietorship, partnership, corporation, or other business entity owned or controlled by the FBI, used by the FBI in connection with an undercover operation, and whose relationship with the FBI is not generally acknowledged.

GENERAL AUTHORITY

(1) The FBI may conduct undercover operations, pursuant to these guidelines, that are appropriate to carry out its investigative responsibilities in domestic law enforcement.

Under this authority, the FBI may participate in joint undercover operations with other federal, state, and local law enforcement agencies; may seek operational assistance for an undercover operation from any suitable informant, confidential source, or other cooperating private individual; and may operate a proprietary on a commercial basis to the extent necessary to maintain an operation's cover or effectiveness.

(2) Undercover operations can be authorized only at the "full investigation" stage in Domestic Security Investigations.

AUTHORIZATION OF UNDERCOVER OPERATIONS

All undercover operations under these guidelines fall into one of two categories: (1) those undercover operations that can be approved by the Special Agent in Charge (SAC) under his own authority, and (2) those undercover operations that can only be authorized by the Director or designated Assistant Director, upon favorable recommendations by the SAC, Bureau headquarters (FBIHQ), and the Undercover Operations Review Committee. Undercover operations in the latter category are those that involve a substantial expenditure of government funds, or otherwise implicate fiscal policies and considerations. (Paragraph A). Also included in this latter category are undercover operations that involve what are termed "sensitive circumstances." In general, these are undercover operations involving investigation of public corruption, or undercover operations that involve risks of various forms of harm and intrusion. (Paragraph B). Of course, in planning an undercover operation, these risks of harm and intrusion will be avoided whenever possible, consistent with the need to obtain necessary evidence in a timely and effective manner.

A. Undercover Operations that May Not be Approved by the Special Agent in Charge because of Fiscal Circumstances

(1) Subject to the emergency authorization procedures set forth in paragraph N, the SAC may not authorize the establishment, extension or renewal of an undercover operation if there is a reasonable expectation that:

(a) The undercover operation could result in significant civil claims against the United States, either arising in tort, contract or claims for just compensation for the "taking" of property;

(b) The undercover operation will require leasing or contracting for property, supplies, services, equipment, or facilities for any period extending beyond the September 30 termination date of the then current fiscal year, or with prepayment of more than one month's rent; or will require leasing any facilities in the District of Columbia;

(c) The undercover operation will require the use of appropriated funds to establish or acquire a proprietary, or to operate such a proprietary on a commercial basis;

(d) The undercover operation will require the deposit of appropriated funds, or of proceeds generated by the undercover operation, in banks or other financial institutions;

(e) The undercover operation will involve use of proceeds generated by the undercover operation to offset necessary and reasonable expenses of the operation;

(f) The undercover operation will require indemnification agreements for losses incurred in aid of the operation, or will require expenditures in excess of $1500 for property, supplies, services, equipment or facilities, or for the construction or alteration of facilities;

(g) The undercover operation will last longer than 6 months or will involve an expenditure in excess of $20,000 or such other amount that is set from time to time by the Director, with the approval of the Attorney General. However, this expenditure limitation shall not apply where a significant and unanticipated investigative opportunity would be lost by compliance with the procedures set forth in paragraphs D, E, F, and G.

B. Undercover Operations that May not be Approved by the Special Agent in Charge Because of Sensitive Circumstances

Subject to the emergency authorization procedures set forth in paragraph N, the SAC may not authorize the establishment, extension or renewal of an undercover operation that involves sensitive circumstances. For purposes of these guidelines, an undercover operation involves sensitive circumstances if there is a reasonable expectation that:

(a) The undercover operation will concern an investigation of possible corrupt action by a public official or political candidate, the activities of a foreign government, the activities of a religious or political organization, or the activities of the news media;

(b) The undercover operation will involve untrue representations by an undercover employee or cooperating private individual concerning the activities or involvement of any innocent person;

(c) An undercover employee or cooperating private individual will engage in any activity that is proscribed by federal, state, or local law as a felony or that is otherwise a serious crime -- except this shall not include criminal liability for the purchase of stolen or contraband goods or for the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary;

(d) An undercover employee or cooperating private individual will seek to supply an item or service that would be reasonably unavailable to criminal actors but for the participation of the government;

(e) An undercover employee or cooperating private individual will run a significant risk of being arrested and seeking to continue undercover;

(f) An undercover employee or cooperating private individual will be required to give sworn testimony in any proceeding in an undercover capacity;

(g) An undercover employee or cooperating private individual will attend a meeting between a subject of the investigation and his lawyer;

(h) An undercover employee or cooperating private individual will pose as an attorney, physician, clergyman, or member of the news media, and there is a significant risk that another individual will be led into a professional or confidential relationship with the undercover employee or cooperating private individual as a result of the pose;

(i) A request for information will be made by an undercover employee or cooperating individual to an attorney, physician, clergyman, or other person who is under the obligation of a legal privilege of confidentiality, and the particular information would ordinarily be privileged;

(j) A request for information will be made by an undercover employee or cooperating private individual to a member of the news media concerning any individual with whom the newsman is known to have a professional or confidential relationship;

(k) The undercover operation will be used to infiltrate a group under investigation as part of a Domestic Security Investigation, or to recruit a person from within such a group as an informant;

(l) There may be a significant risk of violence or physical injury to individuals or a significant risk of financial loss to an innocent individual.

C. Undercover Operations that May be Approved by the Special Agent in Charge

(1) The SAC may authorize the establishment, extension or renewal of all other undercover operations, to be supervised by his field office, upon his written determination, stating supporting facts and circumstances, that:

(a) Initiation of investigative activity regarding the alleged criminal conduct or criminal enterprise is warranted under the Attorney General's Guidelines on the Investigation of General Crimes, the Attorney General's Guidelines on Domestic Security Investigations, the Attorney General's Guidelines on Investigation of Criminal Enterprises Engaged in Racketeering Activity, and any other applicable guidelines;

(b) The proposed undercover operation appears to be an effective means of obtaining evidence or necessary information; this should include a statement of what prior investigation has been conducted, and what chance the operation has of obtaining evidence or necessary information concerning the alleged criminal conduct or criminal enterprise;

(c) The undercover operation will be conducted with minimal intrusion consistent with the need to collect the evidence or information in a timely and effective manner;

(d) Approval for the use of any informant or confidential source has been obtained as required by the Attorney General's Guidelines on Use of Informants and Confidential Sources;

(e) There is no present expectation of the occurrence of any of the circumstances listed in paragraphs A and B;

(f) Any foreseeable participation by an undercover employee or cooperating private individual in illegal activity that can be approved by a SAC on his own authority (that is, the purchase of stolen or contraband goods, or participation in a nonserious misdemeanor), is justified by the factors noted in paragraph I(1).

D. Approval by Headquarters (Undercover Operations Review Committee, and Director or Designated Assistant Director), with Concurrence of United States Attorney or Strike Force Chief, Where Sensitive or Fiscal Circumstances Are Present

The Director of the FBI or a designated Assistant Director must approve the establishment, extension, or renewal of an undercover operation if there is a reasonable expectation that any of the circumstances listed in paragraphs A and B may occur.

In such cases, the SAC shall first make application to FBI Headquarters (FBIHQ). See paragraph E below. FBIHQ may either disapprove the application or recommend that it be approved. A recommendation for approval may be forwarded directly to the Director or designated Assistant Director if the application was submitted to FBIHQ solely because of a fiscal circumstance listed in paragraph A(b)-(e). In all other cases in which FBIHQ recommends approval, the application shall be forwarded to the Undercover Operations Review Committee for consideration. See paragraph E. If approved by the Undercover Operations Review Committee, the application shall be forwarded to the Director or designated Assistant Director. See paragraph G. The Director or designated Assistant Director may approve or disapprove the application.

E. Applications to Headquarters

(1) Each application to Headquarters from a SAC recommending approval of the establishment, extension, or renewal of an undercover operation involving circumstances listed in paragraphs A and B shall be made in writing and shall include, with supporting facts and circumstances:

(a) A description of the proposed undercover operation, including the particular cover to be employed and any informants or other cooperating persons who will assist in the operation; a description of the particular offense or criminal enterprise under investigation, and any individuals known to be involved; and a statement of the period of time for which the undercover operation would be maintained;

(b) A description of how the determinations required by paragraph C(1)(a) - (d) have been met;

(c) A statement of which circumstances specified in paragraphs A and B are reasonably expected to occur, what the operative facts are likely to be, and why the undercover operation merits approval in light of the circumstances, including,

(i) for any foreseeable participation by an undercover employee or cooperating private individual in activity that is proscribed by federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods or making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary -- a statement why the participation is justified by the factors noted in paragraph I(1), and a statement of the federal prosecutor's approval pursuant to paragraph I(2);

(ii) for any planned infiltration by an undercover employee or cooperating private individual of a group under investigation as part of a Domestic Security Investigation, or recruitment of a person from within such a group as an informant, a statement why the infiltration or recruitment is necessary and meets the requirements of the Attorney General's Guidelines on Domestic Security Investigations; and a description of procedures to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

(d) A statement of proposed expenses;

(e) A statement that the United States Attorney or Strike Force Chief is knowledgeable about the proposed operation, including the sensitive circumstances reasonably expected to occur; concurs with the proposal and its objectives and legality; and agrees to prosecute any meritorious case that is developed.

(2) In the highly unusual event that there are compelling reasons that either the United States Attorney or Strike Force Chief should not be advised of the proposed undercover operation, the Assistant Attorney General in charge of the Criminal Division, or other Department of Justice attorney designated by him, may substitute for such person(s) for purposes of any authorization or other function required by these guidelines. Where the SAC determines that such substitution is necessary, the application to FBIHQ shall include a statement of the compelling reasons, together with supporting facts and circumstances, which are believed to justify that determination. Such applications may only be authorized pursuant to the procedures prescribed in paragraph F, below, whether or not consideration by the Undercover Operations Review Committee is otherwise required, and upon the approval of the Assistant Attorney General in charge of the Criminal Division.

(3) An application for the extension or renewal of authority to engage in an undercover operation should also describe the results so far obtained from the operation or a reasonable explanation of any failure to obtain significant results, and a statement that the United States Attorney or Strike Force Chief favors the extension or renewal of authority.

F. Undercover Operations Review Committee

(1) There shall be an Undercover Operations Review Committee, consisting of appropriate employees of the FBI

designated by the Director, and attorneys of the Department of Justice designated by the Assistant Attorney General in charge of the Criminal Division, to be chaired by a designee of the Director.

(2) Upon receipt from FBIHQ of a SAC's application for approval of an undercover operation, the Committee will review the application. The Justice Department members of the Committee may consult with senior Department officials and the United States Attorney or Strike Force Chief, as they deem appropriate. If the Committee concurs in the determinations contained in the application, and finds that in other respects the undercover operation should go forward, see paragraph F(3) and (4) below, the Committee is authorized to recommend to the Director or designated Assistant Director, see paragraph G, that approval be granted.

(3) In reviewing the application, the Committee shall carefully assess the contemplated benefits of the undercover operation, together with the operating and other costs of the proposed operation. In assessing the costs of the undercover operation, the Committee shall consider, where relevant, the following factors, among others:

(a) the risk of harm to private individuals or undercover employees;

(b) the risk of financial loss to private individuals and businesses, and the risk of damage liability or other loss to the government;

(c) the risk of harm to reputation;

(d) the risk of harm to privileged or confidential relationships;

(e) the risk of invasion of privacy;

(f) the degree to which the actions of undercover employees or cooperating private individuals may approach the conduct proscribed in paragraph J below; and

(g) the suitability of undercover employees' or cooperating private individuals' participating in activity of the sort contemplated during the undercover operation.

(4) If the proposed undercover operation involves any of the sensitive circumstances listed in paragraph B, the Committee shall also examine the application to determine whether the

undercover operation is planned so as to minimize the incidence of such sensitive circumstances, and to minimize the risks of harm and intrusion that are created by such circumstances. If the Committee recommends approval of an undercover operation involving sensitive circumstances, the recommendation shall include a brief written statement explaining why the undercover operation merits approval in light of the anticipated occurrence of such sensitive circumstances.

(5) The Committee shall recommend approval of an undercover operation only upon reaching a consensus, provided that:

(a) If one or more of the designees of the Assistant Attorney General in charge of the Criminal Division does not join in a recommendation for approval of a proposed undercover operation because of legal, ethical, prosecutive or Departmental policy considerations, the designee shall promptly advise the Assistant Attorney General and there shall be no approval of the establishment, extension, or renewal of the undercover operation until the Assistant Attorney General has had the opportunity to consult with the Director;

(b) If, upon consultation, the Assistant Attorney General disagrees with a decision by the Director to approve the proposed undercover operation, there shall be no establishment, extension or renewal of the undercover operation until the Assistant Attorney General has had an opportunity to refer the matter to the Deputy Attorney General or Attorney General.

(6) The Committee should consult the Legal Counsel Division of the FBI, and the Office of Legal Counsel or other appropriate division or office in the Department of Justice, about any significant unsettled legal questions concerning authority for or the conduct of a proposed undercover operation.

G. Approval by Director or Designated Assistant Director

The Director or a designated Assistant Director shall have authority to approve operations recommended for approval by the Undercover Operations Review Committee, provided that only the Director may authorize a proposed operation if a reasonable expectation exists that:

(a) There may be a significant risk of violence or physical injury to individuals;

(b) The undercover operation will be used to infiltrate a group under investigation as part of a Domestic Security Investigation, or to recruit a person from within such a group as an informant or confidential source, in which case the Director's authorization shall include a statement of procedures to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity; or

(c) A circumstance specified in paragraph A(b)-(e) is reasonably expected to occur, in which case the undercover operation may be implemented only after the Deputy Attorney General or Attorney General has specifically approved that aspect of the operation in accordance with applicable law.

H. Duration of Authorizations

(1) An undercover operation may not continue longer than is necessary to achieve the objective of the authorization, nor in any event longer than 6 months without new authorization to proceed.

(2) Any undercover operation initially approved by a SAC must be reauthorized by an Assistant Director or the Director, pursuant to paragraphs D-G, if it lasts longer than 6 months or involves expenditures in excess of the amount prescribed in paragraph A(c).

I. Authorization of Participation In "Otherwise Illegal" Activity

Nothwithstanding any other provision of these guidelines, an undercover employee or cooperating private individual shall not engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the approval or authorization of an appropriate government official. For purposes of this paragraph, such activity is referred to as "otherwise illegal" activity.

(1) No official shall recommend or approve an undercover employee's or cooperating private individual's planned or reasonably foreseeable participation in otherwise illegal activity unless the participation is justified in order:

(a) to obtain information or evidence necessary for paramount prosecutive purposes;

(b) to establish and maintain credibility or cover with persons associated with the criminal activity under investigation; or

(c) to prevent or avoid the danger of death or serious bodily injury.

(2) Participation in any activity that is proscribed by federal, state, or local law as a felony or that is otherwise a serious crime -- but not including the purchase of stolen or contraband goods or the making of false representations to third parties in concealment of personal identity or the true ownership of a proprietary -- must be approved in advance by an Assistant Director on the recommendation of the Undercover Operations Review Committee pursuant to paragraphs D-G, except that the Director's approval is required for participation in any otherwise illegal activity involving a significant risk of violence or physical injury to individuals. Approvals shall be recorded in writing.

A recommendation to FBIHQ for approval of participation in such otherwise illegal activity must include the views of the United States Attorney, Strike Force Chief, or Assistant Attorney General on why the participation is warranted.

(3) Participation in the purchase of stolen or contraband goods, or in a nonserious misdemeanor, must be approved in advance by the Special Agent in Charge. Approvals by the SAC shall be recorded in writing.

(4) The FBI shall take reasonable steps to minimize the participation of an undercover employee or cooperating private individual in any otherwise illegal activity.

(5) An undercover employee or cooperating private individual shall not participate in any act of violence, initiate or instigate any plan to commit criminal acts, or use unlawful investigative techniques to obtain information or evidence for the FBI (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or trespass amounting to an illegal search).

(6) If it becomes necessary to participate in otherwise illegal activity that was not foreseen or anticipated, an undercover employee should make every effort to consult with the SAC. For otherwise illegal activity that is a felony or a serious misdemeanor, the SAC can provide emergency authorization

under paragraph N. If consultation with the SAC is impossible and there is an immediate and grave threat to life or physical safety (including destruction of property through arson or bombing), an undercover employee may participate in the otherwise illegal activity so long as he does not take part in and makes every effort to prevent any act of violence. A report to the SAC shall be made as soon as possible after the participation, and the SAC shall submit a full report to FBIHQ. FBIHQ shall promptly inform the members of the Undercover Operations Review Committee.

(7) Nothing in these guidelines prohibits establishing, funding, and maintaining secure cover for an undercover operation by making false representations to third parties in concealment of personal identity or the true ownership of a proprietary (e.g., false statements in obtaining driver's licenses, vehicle registrations, occupancy permits, and business licenses) when such action is approved in advance by the appropriate SAC.

(8) Nothing in paragraph I(5) or (6) prohibits an undercover employee from taking reasonable measures of self defense in an emergency to protect his own life or the life of others against wrongful force. Such measures shall be reported to the SAC and the United States Attorney, Strike Force Chief, or Assistant Attorney General as soon as possible.

(9) If a serious incident of violence should occur in the course of a criminal activity and an undercover employee or cooperating private individual has participated in any fashion in the criminal activity, the SAC shall immediately inform FBIHQ. Headquarters shall promptly inform the Assistant Attorney General in charge of the Criminal Division.

J. Authorization of the Creation of Opportunities for Illegal Activity

(1) Entrapment should be scrupulously avoided. Entrapment is the inducement or encouragement of an individual to engage in illegal activity in which he would otherwise not be disposed to engage.

(2) In addition to complying with any legal requirements, before approving an undercover operation involving an invitation to engage in illegal activity, the approving authority should be satisfied that

(a) The corrupt nature of the activity is reasonably clear to potential subjects;

(b) There is a reasonable indication that the undercover operation will reveal illegal activities; and

(c) The nature of any inducement is not unjustifiable in view of the character of the illegal transaction in which the individual is invited to engage.

(3) Under the law of entrapment, inducements may be offered to an individual even though there is no reasonable indication that that particular individual has engaged, or is engaging, in the illegal activity that is properly under investigation. Nonetheless, no such undercover operation shall be approved without the specific written authorization of the Director, unless the Undercover Operations Review Committee determines (See paragraph F), insofar as practicable, that either

(a) there is a reasonable indication, based on information developed through informants or other means, that the subject is engaging, has engaged, or is likely to engage in illegal activity of a similar type; or

(b) The opportunity for illegal activity has been structured so that there is reason for believing that persons drawn to the opportunity, or brought to it, are predisposed to engage in the contemplated illegal activity.

(4) In any undercover operation, the decision to offer an inducement to an individual, or to otherwise invite an individual to engage in illegal activity, shall be based solely on law enforcement considerations.

K. Authorization of Investigative Interviews that are Not Part of an Undercover Operation

Notwithstanding any other provision of these guidelines, routine investigative interviews that are not part of an undercover operation may be conducted without the authorization of FBIHQ, and without compliance with paragraphs C, D, and E. These include so-called "pretext" interviews, in which an FBI employee uses an alias or cover identity to conceal his relationship with the FBI.

However, this authority does not apply to an investigative interview that involves a sensitive circumstance listed in paragraph B. Any investigative interview involving a sensitive circumstance -- even an interview that is not conducted as part of an undercover operation -- may only be approved pursuant to the procedures set forth in paragraphs D, E, F, and G, or pursuant to the emergency authority prescribed in paragraph N, if applicable.

MONITORING AND CONTROL OF UNDERCOVER OPERATIONS

L. Continuing Consultation with United States Attorney or Strike Force Chief

Throughout the course of any undercover operation that has been approved by Headquarters, the SAC shall consult periodically with the United States Attorney, Strike Force Chief, or Assistant Attorney General concerning the plans and tactics and anticipated problems of the operation.

M. Serious Legal, Ethical, Prosecutive, or Departmental Policy Questions, and Previously Unforeseen Sensitive Circumstances

(1) In any undercover operation, the SAC shall consult with Headquarters whenever a serious legal, ethical, prosecutive, or Departmental policy question is presented by the operation. FBIHQ shall promptly inform the Department of Justice members of the Undercover Operations Review Committee of any such question and its proposed resolution.

(2) This procedure shall always be followed if an undercover operation is likely to involve one of the circumstances listed in paragraphs A and E and either (a) The SAC's application to FBIHQ did not contemplate the occurrence of that circumstance, or (b) the undercover operation was approved by the SAC under his own authority. In such cases the SAC shall also submit a written application for continued authorization of the operation or an amendment of the existing application to Headquarters pursuant to paragraph E.

Whenever such a new authorization or amended authorization is required, the FBI shall consult with the United States Attorney, Strike Force Chief, or Assistant Attorney General, and with the Department of Justice members of the Undercover Operations Review Committee on whether to modify, suspend, or terminate the undercover operation pending full processing of the application or amendment.

N. Emergency Authorization

Notwithstanding any other provision of these guidelines, any SAC who reasonably determines that:

(a) an emergency situation exists requiring the establishment, extension, renewal, or modification of an undercover operation before an authorization mandated by these guidelines can with due diligence be obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, to prevent the hiding or destruction of essential evidence, or to avoid other grave harm; and

(b) there are grounds upon which authorization could be obtained under these guidelines, may approve the establishment, extension, renewal, or modification of an undercover operation if a written application for approval is submitted to Headquarters within 48 hours after the undercover operation has been established, extended, renewed, or modified. In such an emergency situation the SAC shall attempt to consult by telephone with the United States Attorney, Strike Force Chief, or Assistant Attorney General, and with a designated Assistant Director. FBIHQ shall promptly inform the Department of Justice members of the Undercover Operations Review Committee of the emergency authorization. In the event the subsequent written application for approval is denied, a full report of all activity undertaken during the course of the operation shall be submitted to the Director, who shall inform the Deputy Attorney General.

O. Annual Report of Undercover Operations Review Committee

(1) The Undercover Operations Review Committee shall retain a file of all applications for approval of undercover operations submitted to it, together with a written record of the Committee's action on the applications and any ultimate disposition by the Director or a designated Assistant Director. The FBI shall also prepare a short summary of each undercover operation approved by the Committee. These records and summaries shall be available for inspection by a designee of the Deputy Attorney General or of the Assistant Attorney General in charge of the Criminal Division.

(2) On an annual basis, the Committee shall submit to the Director, the Attorney General, the Deputy Attorney General, and the Assistant Attorney General in charge of the Criminal Division, a written report summarizing: (a) the types of undercover operations approved; and (b) the major issues addressed by the Committee in reviewing applications and how they were resolved.

P. Preparation of Undercover Employees

(1) The SAC or a designated supervisory agent shall review with each undercover employee prior to the employee's participation in an investigation, the conduct that the undercover employee is expected to undertake and other conduct whose necessity during the investigation is foreseeable. The SAC or designated supervisory agent shall expressly discuss with each undercover employee any of the circumstances specified in paragraphs A and B which is reasonably expected to occur.

Each undercover employee shall be instructed generally, and in relation to the proposed undercover operation, that he shall not participate in any act of violence; initiate or instigate any plan to commit criminal acts; use unlawful investigative techniques to obtain information or evidence; or engage in any conduct that would violate restrictions on investigative techniques or FBI conduct contained in Attorney General Guidelines or other Department policy; and that, except in an emergency situation, he shall not participate in any illegal activity for which authorization has not been obtained under these guidelines. When the FBI learns that persons under investigation intend to commit a violent crime, any undercover employee used in connection with the investigation shall be instructed to try to discourage the violence.

(2) To the extent feasible, a similar review shall be conducted by a Special Agent with each cooperating private individual.

Q. Review of Undercover Employee Conduct

(1) From time to time during the course of the investigation, as is practicable, the SAC or designated supervisory agent shall review the actual conduct of the undercover employee, as well as the employee's proposed or reasonably foreseeable conduct for the remainder of the investigation, and shall make a determination whether the conduct of the employee has been permissible. This determination shall be communicated to the undercover employee as soon as practicable. Any findings of impermissible conduct shall be promptly reported to the Director, and consultation with the Director shall be undertaken before the employee continues his participation in the investigation. To the extent feasible, a similar review shall be made of the conduct of each cooperating private individual.

(2) A written report on the use of false representations to third parties in concealment of personal identity or the true ownership of a proprietary, for establishing, funding, and maintaining secure cover for an undercover operation, shall be submitted to the SAC or designated supervisory agent at the conclusion of the undercover operation. A written report on participation in any other activity proscribed by federal, state or local law shall be made by an undercover employee to the SAC or designated supervisory agent every 60 days and at the conclusion of the participation in the illegal activity.

R. Deposit of Proceeds; Liquidation of Proprietaries

As soon as the proceeds from an undercover operation are no longer necessary for the conduct of the operation, the remaining proceeds shall be deposited in the Treasury of the United States as miscellaneous receipts.

Whenever a proprietary with a net value over $50,000 is to be liquidated, sold, or otherwise disposed of, the FBI, as much in advance as the Director or his designee shall determine is practicable, shall report the circumstances to the Attorney General and the Comptroller General. The proceeds of the liquidation, sale, or other disposition, after obligations are met, shall be deposited in the Treasury of the United States as receipts.

RESERVATION

These guidelines on the use of undercover operations are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to, create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

Benjamin R. Civiletti
Attorney General

Date:________________

EXHIBIT 2

Office of the Attorney General
Washington, D.C. 20530

ATTORNEY GENERAL'S GUIDELINES ON FBI USE OF INFORMANTS AND CONFIDENTIAL SOURCES

The following guidelines on FBI use of informants and confidential sources are issued under the authority of the Attorney General as provided in 28 U.S.C. 509, 510, and 533. They are consistent with the requirements of the proposed FBI Charter Act, but do not depend upon passage of the Act for their effectiveness.

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A. Introduction

(1) The courts have recognized that the government's use of informants and confidential sources is lawful and often essential to the effectiveness of properly authorized law enforcement investigations. However, use of informants and confidential sources to assist in the investigation of criminal activity may involve an element of deception, intrusion into the privacy of individuals, or cooperation with persons whose reliability and motivation can be open to question. It is proper for the FBI to use informants and confidential sources in appropriate investigations, but special care must be taken to carefully evaluate and closely supervise their use, and to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Though informants and confidential sources are not employees of the FBI, their relationship to the FBI can impose a special responsibility upon the FBI when the informant or confidential source engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

(2) To implement these guidelines, the FBI shall issue detailed instructions to all Special Agents responsible for dealing with informants and confidential sources.

B. Definition of Confidential Source, Informant, and Continuing Basis

(1) A confidential source, under these guidelines, is any person or entity furnishing information to the FBI on a confidential basis, where such information has been obtained as a result of legitimate employment or access to records and is provided consistent with applicable law.

(2) An informant, under these guidelines, is any other person or entity furnishing information to the FBI on a confidential basis.

(3) An informant or confidential source used on a "continuing basis" is one providing information or substantial operational assistance with some degree of regularity. This may be as infrequent as a few times per year, or as frequent as several times per week.

C. General Authority

(1) An informant or confidential source may be asked to provide information already in his possession, to provide information which comes to his attention, or to affirmatively

seek out information, concerning criminal conduct or other subjects of authorized investigative activity. An informant or confidential source may also be asked to provide operational assistance to the FBI, including furnishing resources or facilities.

(2) The FBI may only use informants or confidential sources in furtherance of its authorized investigative activities and law enforcement responsibilities. Informants and confidential sources may not be used or encouraged to commit acts which the FBI could not authorize for its Special Agents.

D. Required Findings of Suitability and Pertinence For Any Informant or Confidential Source Used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation

(1) No informant or confidential source may be used to provide information on a continuing basis, no informant may be authorized to associate in activities, participation in which otherwise would be criminal, nor may any informant or confidential source be used to provide substantial operational assistance in an undercover operation, unless the supervisory FBI official designated below has made written findings:

(a) that the informant or confidential source appears suitable for such use, and

(b) that the information likely to be obtained or the operational assistance to be provided is pertinent to authorized FBI investigative activity or law enforcement responsibilities.

Findings of suitability and pertinence shall be made by a supervisory agent designated by the Director except that in the case of a Domestic Security Investigation, the findings shall be made by a Headquarters official designated by the Director.

(2) A finding of suitability should be preceded by a preliminary inquiry concerning the proposed informant or confidential source. A preliminary inquiry may only be used to assess suitability. It may not be used to develop information concerning an individual for the purpose of inducing him to become an informant or confidential source. A preliminary inquiry can use any lawful investigative technique except mail covers, access to tax information, and any technique requiring probable cause, such as mail openings, nonconsensual electronic surveillance, or searches.

(3) In determining the suitability of an informant or confidential source, the FBI shall weigh and consider the following factors:

(a) the nature of the matter under investigation and the importance of the information or assistance being furnished;

(b) the seriousness of past and contemporaneous criminal activity of which the informant or confidential source may be suspected,

(c) the motivation of the informant or confidential source, including any consideration sought from the government for his cooperation;

(d) the likelihood that the information or assistance which an informant or confidential source could provide is not available in a timely and effective manner by less intrusive means;

(e) the informant's or confidential source's reliability and truthfulness, or the availability of means to verify information which he provides;

(f) any record of conformance by the informant or confidential source to Bureau instructions and control in past operations; how closely the Bureau will be able to monitor and control the informant's or confidential source's activities insofar as he is acting on behalf of the Bureau;

(g) the risk that use of informants or confidential sources in the particular investigation may intrude upon privileged communications, or inhibit the lawful association of individuals or expression of ideas; and

(h) any risk that use of informants or confidential sources may compromise an investigation or subsequent prosecution, including court-ordered disclosures of identity which may require the government to move for dismissal of the criminal case.

(4) A preliminary inquiry and written determination regarding suitability and pertinence should be completed

within 120 days from the date the inquiry began. FBI Headquarters may authorize one or more extensions beyond 120 days, stating in writing the facts and circumstances precluding an earlier determination.

(5) Determinations of suitability and pertinence shall be reviewed at least every 90 days by a field supervisor and at least annually by FBI Headquarters.

(6) If it is determined not to use a person or entity as an informant or confidential source, any information collected about the person or entity during the preliminary inquiry without the consent of the person or entity shall be promptly destroyed, unless it is or may become pertinent to authorized investigative activity or the person is a potential witness in a criminal prosecution. Any decision not to destroy all information about the person or entity shall be recorded with explanatory facts and circumstances in an investigative case file and shall be reviewed periodically by the SAC or designated field supervisor.

(7) At any time the FBI learns an approved informant or confidential source is no longer suitable to provide information or operational assistance, his relationship with the Bureau shall be promptly terminated. FBI Headquarters shall maintain records of informant and confidential source terminations, including a detailed statement of the reasons for each termination. These records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources.

E. Required Instructions to

(1) Any Informant Used on a Continuing Basis, Any Informant Authorized to Associate in Activities, Participation in Which Otherwise Would be Criminal, Any Informant or Confidential Source Suspected of Substantial Involvement in Unauthorized Past or Continuing Criminal Activities, and Any Informant or Confidential Source Providing Substantial Operational Assistance in an Undercover Operation:

Each such person shall be advised that his relationship with the FBI will not protect him from arrest or prosecution for any violation of Federal, State, or local law, except where the FBI has determined pursuant to these guidelines that his association in specific activity, which otherwise would be criminal, is justified for law enforcement; and that in carrying out his assignments he shall under no circumstances participate in any act of violence, initiate or instigate a plan to commit criminal acts, or use unlawful techniques to obtain information (e.g., illegal wiretapping, illegal mail openings, breaking and entering, or criminal trespass). Such persons shall be readvised when necessary, at least annually, and at any time there is reason to suspect they are engaged in serious criminal activity.

(2) Other Confidential Sources Used on a Continuing Basis:

In place of the instructions in paragraph E(1) above, each such confidential source shall be advised that he is not acting as an agent or employee of the FBI, that he should use only lawful techniques to obtain information, and that he should provide information only in accordance with applicable law.

(3) When the FBI learns that persons under investigation intend to commit a violent crime, any informants or confidential sources used in connection with the investigation shall be instructed to try, to the extent practicable, to discourage the violence.

(4) A written record shall be made in each informant or confidential source file of the instructions noted above promptly after they are given.

F. Authorized Participation by Any Informant in Criminal Activities

An informant or confidential source shall not be authorized to engage, except in accordance with this paragraph, in any activity that would constitute a crime under state or federal law if engaged in by a private person acting without the authorization or approval of an appropriate government official. For purposes of this paragraph, such activity is referred to as "otherwise criminal" activity.

(1) A determination that participation by an informant in otherwise criminal activities is justified shall be made only by the supervisory FBI official designated in paragraphs F (2) and (3) below on the basis of his written findings that

(a) the conduct is necessary to obtain information or evidence for paramount prosecutive purposes, to establish and maintain credibility or cover with persons associated with criminal activity under investigation, or to prevent or avoid the danger of death or serious bodily injury; and

(b) this need outweighs the seriousness of the conduct involved.

(2) For purposes of these Guidelines there are two types of otherwise criminal activities -- "extraordinary," i.e., those involving a significant risk of violence, corrupt actions by high public officials, or severe financial loss to a victim, and "ordinary." A determination that participation in activities which otherwise would be "ordinary" criminal activities is justified as part of an informant's assignment shall be made by a field office supervisor or higher level official, and shall be recorded in writing in advance of any such activity, except that oral approval may be given in an emergency situation where confirmed thereafter in writing as soon as possible. The SAC shall review all such criminal activity by informants at least every 90 days.

Determinations authorizing participation in such activities may concern a single instance of otherwise criminal activity or a specified group of otherwise criminal activities.

The written determinations shall be submitted annually to Headquarters for review, and shall be subject to review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants.

(3) A determination that participation in activities which otherwise would be "extraordinary" criminal activities is justified as part of an informant's assignment shall be made only by the SAC and only after the SAC consults with and obtains the approval of the United States Attorney. The consultation shall be in a form suitable to protect the identity of the informant. The SAC's written determination and a record of the United States Attorney's approval shall be immediately forwarded to a senior Headquarters official designated by the Director, and to the Assistant Attorney General in charge of the Criminal Division or his designee, in a form suitable to protect the identity of the informant.

If the SAC reasonably determines that an emergency situation exists requiring informant participation in activities which otherwise would be extraordinary criminal activities before approval by the United States Attorney can with due diligence by obtained, in order to protect life or substantial property, to apprehend or identify a fleeing offender, or to prevent the imminent loss of essential evidence, the SAC may approve the participation on his own authority but shall immediately notify the United States Attorney, the appropriate senior Headquarters official, and the Assistant Attorney General in charge of the Criminal Division or his designee.

In such an emergency situation the SAC shall attempt to consult by telephone with a senior member of the United States Attorney's office before approving participation.

(4) Upon approving any participation in otherwise criminal activity, the FBI shall repeat to the informant the instructions specified in paragraph E(1).

The FBI shall also seek, to the extent practicable, to provide:

(a) that the adverse effect of the activity on innocent individuals is minimized;

(b) that the informant's participation is minimized and that the informant is not the primary source of technical expertise or financial support for the activity in which he will participate;

(c) that the informant's participation in the activity is closely supervised by the FBI; and

(d) that the informant does not directly profit from his participation in the activity.

(5) Any proposal by a confidential source to engage in otherwise criminal activities in order to gather information changes the status of that individual from confidential source to informant.

G. Notifying Appropriate Authorities of Unauthorized Criminal Activity by Any Informant or Confidential Source

(1) While carrying out an FBI assignment, an informant or confidential source bears a relationship to the FBI such that his participation in any unauthorized activity in connection with the assignment associated with criminal acitivites, even of a minor character, should be carefully scrutinized and severely regarded. Hence, whenever a Special Agent learns that an informant or confidential source has participated in a criminal activity in connection with an FBI assignment which was not authorized pursuant to the procedures of paragraph F of these guidelines, the Special Agent shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether

continued use of the informant or confidential source is justified. In exceptional circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall promptly notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, what use will be made of any information gathered through the violation of law, and whether continued use will be made of the informant or confidential source.

(2) Informants who are in a position to have useful knowledge of criminal activities often are themselves involved in a criminal livelihood. It is recognized that in the course of using an informant or confidential source, the FBI may receive limited information concerning a variety of criminal activities by the informant or confidential source, and that in regard to less serious participation in criminal activities unconnected to an FBI assignment, it may be necessary to forego any further investigative or enforcement action in order to retain the source of information. However, whenever a Special Agent learns of the commission of a serious crime by an informant or confidential source, he shall notify a field office supervisor. The supervisor shall make a determination whether to notify appropriate state or local law enforcement or prosecutive authorities of any violation of law and shall make a determination whether continued use of the informant or confidential source is justified. In circumstances where notification to state or local authorities is determined to be inadvisable, or where any request or recommendation is made to state or local authorities to delay or forego enforcement action, the FBI shall immediately notify the Assistant Attorney General in charge of the Criminal Division or his designee of the facts and circumstances concerning the informant's or confidential source's violation of law, what notification or request has been made to state or local law enforcement or prosecutive authorities, and the supporting reasons, and what use will be made of any information gathered through the violation of law. A determination to then continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division or his designee.

(3) Each FBI field office shall immediately notify FBI Headquarters whenever it learns of participation by an

informant or a confidential source in a serious act of violence, even when appropriate state or local law enforcement or prosecutive authorities have been notified. Detailed records shall be maintained at Headquarters regarding each instance of informant or confidential source participation in a serious act of violence, and these records shall be subject to periodic review by a designee of the Deputy Attorney General in a form suitable to protect the identity of the informants and confidential sources. A determination to continue use of the informant or confidential source must be approved by the Director or a senior Headquarters official, after consultation with the Assistant Attorney General in charge of the Criminal Division.

(4) In determining whether to notify appropriate state or local law enforcement or prosecutive authorities of criminal activity by FBI informants and confidential sources, the FBI shall consider:

(a) whether the crime is completed, imminent or inchoate;

(b) the seriousness of the crime in terms of danger to life and property;

(c) whether the crime is a violation of federal or state law, and whether a felony, misdemeanor, or lesser offense;

(d) the degree of certainty of the information regarding the criminal activity;

(e) whether the appropriate authorities already know of the criminal activity and the informant's or confidential source's identity;

(f) the effect of notification on FBI investigative activity.

(5) Under no circumstances shall the FBI take any action to conceal a crime by one of its informants or confidential sources.

H. Informants and Confidential Sources Under the Obligation of a Legal Privilege of Confidentiality or Affiliated with the News Media

(1) A person who is under the obligation of a legal privilege of confidentiality or who is affiliated with the news media may be used as an informant or as a confidential source only upon the express approval in writing by the

Director of a designated senior Headquarters official, except that a field office supervisor may approve one-time receipt of information not collected at the request of the FBI where the particular information is unprivileged.

The FBI shall promptly give written notice, or oral notice confirmed in writing, to the Assistant Attorney General in charge of the Criminal Division or his designee of any such Headquarters authorization. The notice shall include sufficient information to allow meaningful review, and shall set forth the reasons why the individual should be used as an informant or confidential source.

(2) Any such person approved as an informant or confidential source shall be advised by the FBI that in seeking information from him, the FBI is not requesting and does not advocate breach of any legal obligation of confidentiality. A record shall be made and kept in the informant or confidential source file when the advice has been given. This advice shall be provided before accepting information on a continuing basis.

(3) If, despite the advice to the informant or confidential source that revelation of privileged information is not requested or advocated, he offers to provide information that is privileged or arguably privileged, the offer shall not be accepted unless a field office supervisor determines that serious consequences would ensue from rejection of the offer, such as physical injury to an individual or severe property damage. A report concerning such information and the circumstances that warranted its acceptance shall be promptly forwarded to FBI Headquarters.

If the information is spontaneously provided by the informant or confidential source, without any offer that would alert the Special Agent to the nature of the information, in circumstances which do not meet the standard of serious consequences, the information may be recorded in suitable form for the purpose of establishing that the problem was recognized and that no use was made of the information in the conduct of any investigation.

(4) Regardless of state law, the procedures of this section must be followed for any licensed physican, any person admitted to practice law in a court of a state, any practicing clergyman, and any member of the news media.

I. Infiltration of Organization Activities by Informants or Confidential Sources Used on a Continuing Basis

(1) The lawful activities of legitimate organizations are, of course, not subject to investigation. However,

individual members of such organizations may be independently involved in criminal activities. In order to assure that the privacy of constitutionally-protected activities will be respected, the FBI should carefully regulate use of informants and confidential sources who will make use of affiliations with legitimate organizations in order to gather information concerning the activities of individual members.

In particular, when, to obtain information,

(a) an informant or confidential source will make use of formal affiliation with an organization that has a predominantly legitimate purpose, and the informant's or confidential source's formal affiliation will give him continued access to nonpublic information related to the legitimate purposes of the organization; or

(b) an informant or confidential source will make use of formal or informal affiliation with an organization that is predominantly engaged in political activities,

the determination to use the person as an informant or confidential source on a continuing basis shall be made by the ASAC or SAC.

(2) In determining whether the use of such an affiliated person as an informant or confidential source on a continuing basis is appropriate, the ASAC or SAC should consider:

(a) the likelihood of responsible behavior by the informant or confidential source during the course of his organizational membership;

(b) the ability of the FBI to focus the informant's or confidential source's reporting on members of the organization involved in criminal activities and to minimize adverse impact on innocent members of the organization; and

(c) whether the use of the informant or confidential source might inhibit free association or expression of ideas by innocent members of the organization in the future, or hinder the ability of the organization to function effectively.

(3) In approving the use of such an affiliated person as an informant or confidential source on a continuing basis, the ASAC or SAC shall establish procedures, recorded

in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

(4) Nothing in this paragraph limits the authority of the FBI to conduct otherwise proper investigations of illegitimate organizations or organizations engaged in unlawful activities. See the Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, and on Domestic Security Investigations.

J. Minimization in Domestic Security Investigations

In approving use of an informant or confidential source to infiltrate a group under investigation as part of a Domestic Security Investigation, or in recruiting a person from within such a group as an informant or confidential source, an FBI Headquarters official shall establish procedures, recorded in writing, to minimize any acquisition, retention, and dissemination of information that does not relate to the matter under investigation or to any other authorized investigative activity.

K. Persons Represented by Counsel

Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically on applicable law and Department procedure.

L. Coordination with United States Attorneys and Other Federal Prosecutors

In any matter presented to a United States Attorney or other federal prosecutor for legal action (including prosecution, grand jury investigation, application for a search warrant, or application for a wiretap), where the matter has involved the use of an informant or a confidential source in any way or degree, the FBI shall take the initiative to provide full disclosure to the federal prosecutor concerning the nature and scope of the informant's or confidential source's participation in the matter.

If the FBI deems it necessary to withhold certain information to protect the informant's or confidential source's identity from possible compromise, it shall inform the prosecutor of the general nature of the information that is being withheld.

M. Compensation for Informants and Confidential Sources

(1) The FBI may pay informants and confidential sources a reasonable amount of money or provide other lawful consideration for information furnished, services rendered, or expenses incurred in authorized investigative activity. No payment of money or other consideration, other than a published reward, shall be conditioned on the conviction of any particular individual.

(2) In investigations involving serious crimes or the expenditure of extensive investigative resources, the FBI may compensate informants or confidential sources with an extraordinary payment in excess of $25,000. The Attorney General shall be informed of any such extraordinary payment as he deems necessary.

(3) Where practicable, compensation agreements with informants or confidential sources in connection with a significant FBI undercover operation shall provide that compensation will depend on compliance with the obligation of confidentiality for investigative information, and shall further provide that any profits derived from a violation of the obligation shall be forfeited to the United States.

N. Reservation

These guidelines on the use of informants and confidential sources are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

Benjamin R. Civiletti
Attorney General

Date: 12/3/80

EXHIBIT 3

Office of the Attorney General
Washington, D.C. 20530

THE ATTORNEY GENERAL'S GUIDELINES ON CRIMINAL INVESTIGATIONS OF INDIVIDUALS AND ORGANIZATIONS

As the primary criminal investigative agency in the federal government, the FBI has the authority and responsibility to investigate all criminal violations of federal law not exclusively assigned to another federal agency. The FBI thus plays a central role in national law enforcement and in the proper administration of justice in the United States.

These Guidelines attempt to strike the difficult balance between the recognized need for broad investigative authority in the FBI, and the equally important need for protection of individual rights. It is hoped that the Guidelines will encourage agents of the FBI to perform their duties with greater certainty, confidence and effectiveness. These Guidelines should also give the public a firm assurance that the FBI is acting properly under the law.

In large measure these Guidelines reaffirm current investigative practices of the FBI. A key principle underlying these practices, and reflected in these Guidelines, is that individuals and organizations should be free from law enforcement scrutiny that is undertaken without a valid factual predicate and without a valid law enforcement purpose. Such investigative activity poses the risk of undue injury to reputation and increases the chance that an investigative target may be prosecuted for improper reasons. Accordingly, these Guidelines recognize that FBI investigations should be focused on the detection, prevention and prosecution of crimes. In addition, they reaffirm the requirement that inquiries and investigations should be based on a reasonable factual predicate, and subject to objective review in the FBI and the Justice Department.

These Guidelines, which include the Attorney General's previously promulgated Guidelines on Domestic Security Investigations, provide guidance for all investigations by the FBI of crimes and crime-related activities. The standards and requirements set forth herein govern the circumstances under which an investigation may be begun, and the permissible scope, duration, subject-matters, and objectives of an investigation.

All investigations of crime or crime-related activities shall be undertaken in accordance with one or more of these Guidelines. The first set of Guidelines governs investigations undertaken to detect, prevent and prosecute specific violations of federal law. The second set of Guidelines governs criminal intelligence investigations undertaken to obtain information concerning enterprises which are engaged in racketeering activities involving violence, extortion or public corruption. The third set of Guidelines governs criminal intelligence investigations undertaken for the purpose of obtaining information on activities that threaten the national security, as defined herein.

These Guidelines are issued under the authority of the Attorney General as provided in 28 U.S.C. 509, 510, and 533. They are consistent with the requirements of the proposed FBI Charter Act but do not depend upon passage of the Act for their effectiveness.

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I. General Crimes Investigations

A. General Principles

A primary mission of the Federal Bureau of Investigation is to investigate specific violations of the federal criminal laws for purposes of detection, prevention, and prosecution of crime. These investigations are called "general crimes" investigations under these Guidelines, to distinguish them from criminal intelligence investigations of racketeering enterprises and of domestic security matters.

Three sorts of principles must be observed in investigating general crimes. The first address when an investigation can properly be opened. The second address how an investigation should be conducted. The third address when an investigation should be terminated.

First, investigations should be conducted only for the purpose of detecting, preventing, or prosecuting violations of federal criminal law. No investigation may be based solely on the lawful expression of religious or political views by an individual or group, the lawful exercise of the right to peaceably assemble and to petition the Government, or the lawful exercise of any other right secured by the Constitution or by the laws of the United States. An investigation may be opened when there are facts or circumstances that "reasonably indicate" a federal criminal violation has occurred, is occurring, or will occur. This standard of "reasonable indication" is substantially lower than probable cause, but does require specific facts or circumstances indicating a violation.

Second, an investigation is to be conducted with minimal intrusion consistent with the need to collect information or evidence in a timely and effective manner. The seriousness of the alleged criminal activity and the quality of the information indicating the existence of the activity should be among the factors considered in determining the investigation's proper scope and intrusiveness.

Third, an investigation should be promptly terminated upon completion of all reasonable and logical investigative steps, and if appropriate, should be presented for prosecutive opinion.

Where the factual basis for an investigation does not yet exist, but some response appears to be warranted to an allegation or other information concerning possible illegal conduct, these Guidelines also permit the limited step of conducting a preliminary "inquiry". Inquiries as a general rule should be less intrusive and of shorter duration than full investigations.

In circumstances where neither an investigation nor an inquiry is warranted, the FBI may ascertain the general scope and nature of criminal activity in a particular location or sector of the economy.

B. Definitions

(1) "Exigent circumstances" are circumstances requiring action before authorization otherwise necessary under these guidelines can reasonably be obtained, in order to protect life or substantial property interests; to apprehend or identify a fleeing offender; to prevent the hiding, destruction or alteration of evidence; or to avoid other serious impairment or hindrance of an investigation.

(2) "Sensitive criminal matter" is any alleged criminal conduct involving corrupt action by a public official or political candidate, the activities of a foreign government, the activities of a religious organization or a primarily political organization or the related activities of any individual prominent in such an organization, or the activities of the news media; and any other matter which in the judgment of a Special Agent in Charge (SAC) should be brought to the attention of the United States Attorney or other appropriate official in the Department of Justice, as well as FBI Headquarters (FBIHQ).

C. Investigations

(1) A general crimes investigation may be initiated by the FBI when facts or circumstances reasonably indicate that a federal crime has been, is being, or will be committed. The investigation may be conducted to prevent, solve, and prosecute such criminal activity.

The standard of "reasonable indication" is lower than probable cause. In determining whether there is reasonable indication of a federal criminal violation, a Special Agent may take into account any facts or circumstances that a prudent investigator would consider. However, the standard does require specific facts or circumstances indicating a past, current, or impending violation. There must be an objective, factual basis for initiating the investigation; a mere hunch is insufficient.

(2) Where a criminal act may be committed in the future, preparation for that act can, of course, amount to a current criminal violation under the conspiracy or attempt provisions of federal criminal law, if there are present the requisite agreement and overt act, or substantial step

toward completion of the criminal act and intention to complete the act. With respect to criminal activity that may occur in the future but does not yet involve a current criminal conspiracy or attempt, particular care is necessary to assure that there exist facts and circumstances amounting to a reasonable indication that a crime will occur.

(3) The FBI supervisor authorizing an investigation shall assure that the facts or circumstances meeting the standard of reasonable indication have been recorded in writing.

In sensitive criminal matters, as defined in paragraph B(2), the United States Attorney or an appropriate Department of Justice official and FBIHQ shall be notified in writing of the basis for an investigation as soon as practicable after commencement of the investigation.

(4) In a general crimes investigation, the FBI may use any lawful investigative technique. Before employing a technique, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether a highly intrusive technique should be used depends on the seriousness of the crime and the strength of the information indicating the existence of the crime. It is recognized that choice of technique is a matter of judgment.

(5) All requirements for use of a technique set by statute, Department regulations and policies, and Attorney General guidelines must be complied with. The investigative techniques listed below are subject to the noted restrictions:

(a) Informants and confidential sources must be used in compliance with the Attorney General's Guidelines on the Use of Informants and Confidential Sources;

(b) Undercover operations must be conducted in compliance with the Attorney General's Guidelines on FBI Undercover Operations;

(c) Nonconsensual electronic surveillance must be conducted pursuant to the warrant procedures and requirements of Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-2520;

(d) Pen registers must be authorized pursuant to Department policy. This requires an order from a federal district court and an extension every 30 days, under the December 18, 1979 memorandum from the Assistant AttorneyGeneral in charge of the Criminal Division to all United States Attorneys;

(e) Consensual electronic monitoring must be authorized pursuant to Department policy. For consensual monitoring of conversations other than telephone conversations, advance authorization must be obtained from the Director or Associate Director of the Office of Enforcement Operations or a Deputy Assistant Attorney General in the Criminal Division, or the Assistant Attorney General in charge of the Criminal Division, except in exigent circumstances. This applies both to devices carried by the cooperating participant and to devices installed on premises under the control of the participant. See USAM 9-7.013. For consensual monitoring of telephone conversations, advance authorization must be obtained from the SAC and the appropriate U.S. Attorney, except in exigent circumstances;

(f) Searches and seizures must be conducted under the authority of a valid warrant unless the search or seizure comes within a judicially recognized exception to the warrant requirement;

(g) Whenever an individual is known to be represented by counsel in a particular matter, the FBI shall follow applicable law and Department procedure concerning contact with represented individuals in the absence of prior notice to their counsel. The SAC or his designee and the United States Attorney shall consult periodically on applicable law and Department procedure.

(6) The Special Agent conducting an investigation shall maintain periodic written or oral contact with the appropriate federal prosecutor, as circumstances require and as requested by the prosecutor.

When, during an investigation, a matter appears to arguably warrant prosecution, the Special Agent shall present the relevant facts to the appropriate federal prosecutor. In every sensitive criminal matter, the FBI shall notify the appropriate federal prosecutor of the termination of an investigation within 30 days of such termination. Information on investigations which have been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice offical.

(7) When a serious matter investigated by the FBI is referred to state or local authorities for prosecution, the FBI, insofar as resources permit, shall promptly advise the federal prosecutor in writing if the state or local authorities decline prosecution or fail to commence prosecutive action within 120 days. Where an FBI field office cannot provide this follow-up, the SAC shall so advise the federal prosecutor.

(8) When credible information is received concerning serious criminal activity not within the FBI's investigative jurisdiction, the FBI field office shall promptly transmit the information or refer the complainant to the law enforcement agencies having jurisdiction, except where disclosure would jeopardize an ongoing investigation, endanger the safety of an individual, disclose the identity of an informant, interfere with an informant's cooperation, or reveal legally privileged information. If full disclosure is not made for the reasons indicated, then whenever feasible, the FBI field office shall make at least limited disclosure to the law enforcement agency having jurisdiction, and full disclosure shall be made as soon as the need for restricting dissemination is no longer present. Where full disclosure is not made to the appropriate law enforcement agencies within 180 days, the FBI field office shall promptly notify FBI Headquarters in writing of the facts and circumstances concerning the criminal activity. The FBI shall make a periodic report to the Deputy Attorney General on such nondisclosure and incomplete disclosures, in a form suitable to protect the identity of informants and confidential sources.

Whenever information is received concerning unauthorized criminal activity by an informant or confidential source, it shall be handled in accord with paragraph G of the Attorney General's Guidelines on Use of Informants and Confidential Sources.

(9) All requirements regarding investigations shall apply to reopened investigations. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified in writing as soon as practicable after the reopening of an investigation.

Inquiries

(1) On some occasions the FBI may receive information or an allegation not warranting a full investigation -- because there is not yet a "reasonable indication" of criminal activity -- but whose responsible handling requires some further scrutiny beyond the prompt and extremely limited checking out of initial leads. In such circumstances, though the factual predicate for an investigation has not been met, the FBI may initiate an "inquiry" involving some measured review, contact, or observation activities in response to the allegation or information indicating the possibility of criminal activity.

This authority to conduct inquiries short of a full investigation allows the government to respond in a measured way to ambiguous or incomplete information and to do so with as little intrusion as the needs of the situation permit. This is especially important in such areas as white-collar crime where no complainant is involved or when an allegation or information is received from a source of unknown reliability. It is contemplated that such inquiries would be of short duration and be confined solely to obtaining the information necessary to make an informed judgment as to whether a full investigation is warranted.

An "inquiry" is not a required step when facts or circumstances reasonably indicating criminal activity are already available; in such cases, a full investigation can be immediately opened.

(2) The FBI supervisor authorizing an inquiry shall assure that the allegation or other information which warranted the inquiry has been recorded in writing. In sensitive criminal matters, the United States Attorney or an appropriate Department of Justice official shall be notified of the basis for an inquiry as soon as practicable after the opening of the inquiry, and the fact of notification shall be recorded in writing.

(3) Inquiries shall be completed within 60 days after initiation of the first investigative step. The date of the first investigative step is not necessarily the same date on which the first incoming information or allegation was received. An extension of time in an inquiry for succeeding 30-day periods may be granted by FBI Headquarters upon receipt of a written request and statement of reasons why further investigative steps are warranted when there is no "reasonable indication" of criminal activity.

(4) Before employing an investigative technique in an inquiry, the FBI should consider whether the information could be obtained in a timely and effective way by less intrusive means. Some of the factors to be considered in judging intrusiveness are adverse consequences to an individual's privacy interests and avoidable damage to his reputation. Whether an intrusive technique should be used in an inquiry depends on the seriousness of the possible crime and the strength of the information indicating the possible existence of the crime. However,.the techniques used in an inquiry should generally be less intrusive than those employed in a full investigation. It is recognized that choice of technique is a matter of judgment.

(5) The following investigative techniques shall not be used during an inquiry:

(a) Mail covers;

(b) Mail openings;

(c) Nonconsensual electronic surveillance or any other investigative technique covered by Title III of the Omnibus Crime Control and Safe Streets Act of 1968, 18 U.S.C. 2510-2520.

(6) The following investigative techniques may be used in an inquiry without any prior authorization from a supervisory agent:

(a) Examination of FBI indices and files;

(b) Examination of records available to the public and other public sources of information;

(c) Examination of available federal, state and local government records;

(d) Interview of the complainant, previously established informants, and confidential sources;

(e) Interview of the potential subject;

(f) Interview of persons who should readily be able to corroborate or deny the truth of the allegation, except this does not include pretext interviews or interviews of a potential subject's employer or co-workers unless the interviewee was the complainant;

(g) Physical or photographic surveillance of any person.

The use of any other lawful investigative technique in an inquiry shall require prior approval by a supervisory agent, except in exigent circumstances. Where a technique is highly intrusive, a supervisory agent shall approve its use in the inquiry stage only in compelling circumstances and when other investigative means are not likely to be successful.

(7) Where an inquiry fails to disclose sufficient information to justify an investigation, the FBI shall terminate the inquiry and make a record of the closing. In a sensitive criminal matter, the FBI shall notify the United States Attorney of the closing and record the fact of notification in writing. Information on an inquiry which has been closed shall be available on request to a United States Attorney or his designee or an appropriate Department of Justice official.

(8) All requirements regarding inquiries shall apply to reopened inquiries. In sensitive criminal matters, the United States Attorney or the appropriate Department of Justice official shall be notified as soon as practicable after the reopening of an inquiry.

II. Racketeering Enterprise Investigations

The vast majority of FBI investigations will be conducted pursuant to Part I, and will be directed at specific activities or conduct in violation of federal law -- what are termed "general crimes" under these guidelines. In addition to this authority the FBI may also investigate certain criminal organizations or enterprises -- what are termed "racketeering enterprises" -- for the purpose of obtaining information concerning the composition, structure, and activities of the racketeering enterprises. Except in exceptional circumstances specifically authorized by the Director and concurred in by the Attorney General, this authority may be exercised only when the activity engaged in by the racketeering enterprise involves violence, extortion, or systematic public corruption.

A. Definitions

1. A "racketeering enterprise" is two or more persons engaged in a continuing course of conduct for the purpose of obtaining monetary or commercial gains or profits wholly or in part through racketeering activity.

2. Racketeering activity is any offense, including a violation of state law, encompassed by the Racketeer Influenced and Corrupt Organizations Act, 18 U.S.C. §1961(1).

B. General Authority

1. The FBI has authority to conduct investigations of racketeering enterprises whose activities involve violence, extortion, or systematic public corruption. A racketeering enterprise not engaged in such activities may be investigated under this authority only upon a written determination by the Director, concurred in by the Attorney General, that such investigation is justified by exceptional circumstances.

2. A racketeering enterprise investigation may be initiated only when facts or circumstances reasonably indicate the existence of a racketeering enterprise meeting the criteria set forth in paragraph II B 1. The standard of "reasonable indication" is identical to that governing the initiation of a general crimes investigation under Part I.

3. Authority to conduct racketeering enterprise investigations is separate from and in addition to general crimes investigative authority under Part I. Information warranting initiation of a racketeering enterprise investigation may be obtained during the course of a general crimes inquiry or investigation. Conversely, a racketeering enterprise investigation may yield information warranting a general crimes inquiry or investigation.

C. Purpose

The immediate purpose of a racketeering enterprise investigation is to obtain information concerning the nature and structure of the enterprise, as specifically delineated in paragraph II D below, with a view to the longer range objective of detection, prevention, and prosecution of the criminal activities of the enterprise.

D. Scope

1. A racketeering enterprise investigation properly initated under these guidelines may collect information concerning:

a. The members of the enterprise and other persons likely to be knowingly acting in the furtherance of racketeering activity, provided that the information concerns such persons' activities on behalf of or in furtherance of the enterprise;

b. the finances of the enterprise;

c. the geographical dimensions of the enterprise; and

d. the past and future activities and goals of the enterprise.

2. In obtaining the foregoing information, any lawful investigative technique may be used, in accordance with the requirements of paragraphs C 4 and 5 of Part I.

E. Authorization and Renewal

1. A racketeering enterprise investigation may be authorized by the Director or designated Assistant Director upon a written recommendation setting forth the facts and circumstances reasonably indicating the existence of a racketeering enterprise whose activities involve violence, extortion, or systematic public corruption. In such cases the FBI shall notify the Attorney General or his designee of the opening of the investigation. An investigation of a racketeering enterprise not involved in these activities may be authorized only by the Director upon his written determination, concurred in by the Attorney General, that such investigation is warranted by exceptional circumstances. In all investigations, the Attorney General may, as he deems necessary, request the FBI to provide a report on the status of the investigation.

2. A racketeering enterprise investigation may be initially authorized for a period of up to 180 days. An investigation may be continued upon renewed authorization for additional periods each not to exceed 180 days. Renewal authorization shall be obtained from the Director or designated Assistant Director. The concurrence of the Attorney General must also be obtained if his concurrence was initially required to authorize the investigation.

3. Investigations shall be reviewed by the Director or designated senior Headquarters official on or before the expiration of the period for which the investigation and each renewal thereof is authorized.

4. An investigation which has been terminated may be reopened upon a showing of the same standard and pursuant to the same procedures as required for initiation of an investigation.

III. Domestic Security Investigations

The Attorney General's Guidelines on Domestic Security Investigations, promulgated in 1976, shall continue to govern such investigations.

IV. Reservation

A. Nothing in these guidelines shall limit general reviews or audits of papers, files, contracts, or other records in the Government's possession, or the performance of similar services at the specific request of a department or agency of the United States. Such reviews, audits, or similar services must be for the purpose of detecting or preventing violations of federal law which are within the investigative responsibility of the FBI.

B. These Guidelines are set forth solely for the purpose of internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter, civil or criminal, nor do they place any limitations on otherwise lawful investigative and litigative prerogatives of the Department of Justice.

Benjamin R. Civiletti
Attorney General

Date: 12/2/80

EXHIBIT 4

MEMORANDUM FROM LEGAL COUNSEL TO DIRECTOR OF FBI CONCERNING LEGALITY OF VARIOUS UNDERCOVER TECHNIQUES, APRIL 4, 1978

See pages 216 through 222, FBI Statutory Charter, hearings before the Subcommittee on Administrative Practice and Procedure of the Committee on the Judiciary, U.S. Senate, Ninety-Fifth Congress, second session on FBI Statutory Charter, Part 2, June 12 and 27, July 12, August 10 and 15, September 26, 1978.

EXHIBIT 5

TESTIMONY OF PHILIP HEYMANN AND WILLIAM WEBSTER, APRIL 29, 1982 AND JUNE 3, 1982

See pages 400-37, 490-544, FBI Undercover Operations: Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary House of Representatives, Ninety-Seventh Congress, second session, February 4, March 2, April 1, 22, 29, June 2, 3, 9, July 22, November 23, 1982.

EXHIBIT 6

TESTIMONY OF PHILIP HEYMANN AND WILLIAM WEBSTER, MARCH 4, 1980

See pages 131 through 178, FBI Oversight, Hearings before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, Ninety-sixth Congress, first and second session on FBI Oversight, March 8, 15, 21, 27, 1979, March 4, 10, and 17, 1980.

EXHIBIT 7

DRUG ENFORCEMENT ADMINISTRATION DOMESTIC OPERATIONS GUIDELINES*

The following guidelines are intended to promote efficiency in the operations of the Drug Enforcement Administration (DEA) and to improve coordination between DEA and other branches of the Department of Justice. The imposition of any sanction for failure to comply with these guidelines remains exclusively within the jurisdiction of the Attorney General and the Administrator of DEA, and such other persons as they may designate.

These guidelines provide only internal Department of Justice guidance. They are not intended to, do not, and may not be relied upon to create any rights, substantive or procedural, enforceable at law by any party in any matter civil or criminal.

I. ENFORCEMENT ACTIVITIES

A. Objective

1. Enforcement activities are those procedures employed by DEA Special Agents intended to result in (1) the arrest, prosecution and incarceration of drug traffickers, (2) the disruption of illicit traffic, (3) the reduction of drug availability through seizure of drugs and equipment necessary for operation of drug networks, and (4) deterrent effects on other traffickers by discouraging continued or potential trafficking.

2. Enforcement activities shall be undertaken with the primary objectives of prosecuting individuals, or individuals acting in concert, who finance, control, or direct drug trafficking organizations, or of interdicting the flow of drugs from significant drug trafficking operations.

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* As amended, December 20, 1979.

3. Enforcement activities of DEA include what are traditionally considered investigation activities and intelligence activities. For the purposes of these guidelines, investigation is defined as the process of gathering evidence primarily for the immediate purpose of initiating a criminal prosecution, or for the seizure of specific unlawful shipments of controlled substances. The term "investigation" as used in these guidelines is not intended to include investigations of "leads" originated by or furnished to DEA offices. For the purposes of these guidelines, intelligence is defined as information gathered in support of the mission of DEA which is not collected primarily for the immediate purpose of initiating a specific prosecution, but which may ultimately lead to prosecution of one or more individuals or the seizure of unlawful shipments of controlled substances.

4. DEA investigations often produce ancillary intelligence, and DEA intelligence activities often produce evidence useful in criminal prosecutions. Internal review mechanisms provided for by these guidelines are not intended to apply to sporadic intelligence activities; nor are such activities to be reported to the United States Attorneys as investigations under Section I.D. of these guidelines. On the other hand, the systematic gathering of information targeted on an individual or individuals, or on a drug trafficking operation, which continues for a period--and in a manner--typically associated with an investigation, shall be considered as an investigation within the meaning of Sections I.B., C., and I.D.(relating to consultation with United States Attorneys).

B. Initiating Enforcement Activities

1. Investigation may be initiated based on facts or information indicating possible violation of the Controlled Substances Act, or other laws within the investigative jurisdiction of the Drug Enforcement Administration.

2. Supervisory approval of anticipated enforcement activity, including undercover operations as defined in these guidelines, is required prior to any Special Agent, informant, or defendant-informant, undertaking action. In each investigation an initiation report will be prepared by the Special Agent setting out the initial basis, targets, and objectives for the investigation.

C. Review and Continuation of Enforcement Activities

1. All review and approval for continuation of enforcement activities as provided below shall be reflected in writing.

2. An Agent's immediate supervisor shall review each investigation at regular intervals designed to ensure timely oversight of the conduct of the investigation, including undercover operations, and progress toward meeting the objectives of enforcement activities. The supervisor should consider such developments in the investigation as changes in the targets or objectives, assignment of additional agent resources, approval of significant amounts for purchase of information or evidence, and review requirements provided elsewhere in these guidelines in setting the review schedule.

3. Investigations reviewed under I.C.(2) may continue:

(a) where there is a clear indication of a violation of law within DEA's investigative jurisdiction and additional investigation of the alleged violators is required; or

(b) in the absence of a clear indication of a violation of law, the Agent's immediate supervisor shall authorize continued investigation only if there is substantial reason to believe that the investigation may:

(1) In DEA-initiated cases, lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization, or to interdiction of the flow of drugs from a significant drug trafficking operation (e.g., seizing a major shipment or processing laboratory);

(2) In non-DEA-initiated cases, meet the objectives set by the Drug Enforcement Administration for such cases (e.g., State or local prosecution of locally significant drug law violators).

All decisions to continue investigations shall meet the objectives of enforcement activities, and investigations shall continue in accordance with other provisions of these guidelines.

4. If enforcement activity is discontinued pursuant to paragraph I.C.3 above, enforcement activity may be reinstituted at any time new information consistent with the standards of paragraph I.C.3 is received or developed.

5. SAIC's shall ensure that each investigation is reviewed at the second supervisory level or above on a regular basis, no more than 6 months after its initiation, and regular intervals (not to exceed 6 months) for as long as the investigation continues, and may authorize its continuation if the standards set forth in paragraph I.C.3.(a) or (b) are met.

6. Upon completion of a review under paragraph I.C.5, SAIC's shall report to DEA Headquarters each investigation authorized to continue under I.C.3 above, and shall set forth their reasons for continuing investigation.

7. SAIC's will be responsible for reporting to DEA Headquarters on all important intra- and interregional investigations which indicate

potential multiple prosecutions of important violators. DEA may impose additional review and reporting requirements consistent with these guidelines.

D. Coordination with United States Attorneys

The purpose of this section of the guidelines is to insure that United States Attorneys are advised of all major investigations for which they will have responsibility for prosecution. Consistent with the requirements provided in these guidelines, DEA shall insure that the United States Attorneys are fully advised of investigations on a timely basis, and each United States Attorney shall insure that these reporting requirements are implemented within his district.

1. The Drug Enforcement Administration shall insure, unless authorized to the contrary by the United States Attorney, that the appropriate United States Attorney is advised of all investigations as soon as it appears to the first-line supervisory DEA agent that there is probable cause to make an arrest, even though no arrest is in fact contemplated. In investigations where the subjects are believed to be part of a major drug trafficking organization, but probable cause to make an arrest has not yet been established, the notification of a pending investigation to the United States Attorney shall be made by DEA at such time as it is determined that the subjects are part of a major drug trafficking organization. Schedules for other reporting of "investigations," as defined in paragraphs I.A.3. and 4., shall be determined by the SAIC and the United States Attorney in each district, so that the United States Attorney is assured of timely knowledge of investigative activities. The United States Attorney shall be consulted, shall

assign an Assistant United States Attorney if appropriate, and shall be furnished progress reports of the investigation at regular intervals to assure appropriate participation by prosecuting officials.

2. Investigations required to be reported to a United States Attorney under paragraph I.D.1., which involve possible offenses prosecutable in more than one Federal judicial district shall be reported to the Department of Justice, and to the appropriate United States Attorneys. The Department shall be consulted and furnished progress reports on such investigations at regular intervals.

3. The United States Attorney in each Federal judicial district shall, consistent with Department of Justice guidance, determine policy regarding declinations and also the referral of prosecutions to State and local authorities.

4. The United States Attorney shall, except in exigent circumstances, be consulted prior to the arrest of a defendant and again immediately after the arrest. The United States Attorney shall be furnished a written report of the arrest no later than five (5) working days after the arrest. The provisions of this subparagraph shall not apply to arrest of defendants who will be prosecuted in State or local courts, provided that such referrals for State and local prosecution are within the policy determinations and procedures of the United States Attorney provided for in subparagraph 3. above.

5. In all cases of seizures without a search warrant, unless reported incident to an arrest, a report in writing shall be submitted to the United States Attorney not later than ten (10) working days after seizure.

6. DEA shall, with due regard for the time necessary to prepare for trial, advise the prosecuting United States Attorney of any compensation paid to, or other consideration furnished to, an informant or defendant-informant, as well as of any electronic surveillance relating to the case.

7. All relevant DEA case files and manuals will be available for review by U. S. Attorneys on request. The U. S. Attorney shall be responsible for insuring the security and confidentiality of materials furnished by DEA.

8. Department of Justice instructions to United States Attorneys relating to these guidelines will be provided to DEA.

II. SOURCES, INFORMANTS AND DEFENDANT-INFORMANTS

A. General

1. A "source of information" is a person or organization furnishing information without compensation on an occasional basis (e.g., an observer of an event, or a company employee who obtains relevant information in the normal course of his employment), or a person or organization in the business of furnishing information for a fee and receiving only its regular compensation for doing so (e.g., a credit bureau).

2. An "informant" is a person who, under the specific direction of a DEA Agent, with or without the expectation of payment or other valuable consideration, furnishes information regarding drug trafficking or performs other lawful services.

3. A "defendant-informant" is a person subject to arrest and prosecution for a Federal offense, or a defendant in a pending Federal or State case who, under the specific direction of a DEA Agent, with an expectation of payment or other valuable consideration, provides information regarding drug trafficking or performs other lawful services.

4. Any individual or organization may be a source of information. Restrictions placed on the use of informants and defendant-informants are not applicable to sources of information.

5. Informants, and defendant-informants are assets of DEA, and are not to be considered personal resources of individual Agents. At least two (2) DEA Agents should be in a position to contact an informant or defendant-informant, and whenever practicable two (2) DEA Agents shall be present at all contacts and interviews with informants and defendant-informants. Regular contacts shall be maintained with informants and defendant-informants. The first-level supervisor will be responsible for ensuring that contacts, and the information gained from them, under this guideline are documented on a regular and timely basis.

6. Informants, and defendant-informants shall be advised that they are cooperating with DEA, but are not agents or employees of DEA or the Federal government. They shall be advised that information they provide may be used in a criminal proceeding. They may be told that DEA will use all lawful means available to maintain the confidentiality of their identity. Except in extraordinary circumstances they should not be assured that they will never be required to testify or otherwise have their identity disclosed in a criminal proceeding. In extraordinary circumstances they may be given this assurance after approval of the SAIC, provided the United States Attorney shall be notified of any such assurance given to any individual having information relevant to a pending investigation in advance of prosecution proceedings, including grand jury proceedings.

B. Informants

1. Only individuals who are believed able to furnish reliable enforcement information or other lawful services, and who are believed able to maintain the confidentiality of DEA interests and activities, may be utilized as informants.

2. Except as provided in paragraph II.B.3, an Agent must obtain the approval of his immediate supervisor prior to utilizing any informant. The approving supervisor should review the relevant data, including the criminal record, of any potential informant and ascertain whether he is the subject of a pending DEA investigation before deciding whether to approve him as an informant. Before an individual is asked to render services, in addition to supplying information, a more extensive investigation and evaluation of the individual shall be conducted. However, DEA may use an informant temporarily without extensive investigation where a second-line supervisor determines that lack of sufficient time precludes such investigation.

3. Individuals in the following categories represent particular risks as informants, and their use for an initial ninety (90) days may be utilized only as authorized below:

(a) individuals who are less than eighteen (18) years of age, with the written consent of a parent or a legal guardian, when authorized by the SAIC;

(b) individuals on Federal or State probation or parole, with the consent of the agency supervising them, and complete documentation by DEA, when authorized by the SAIC;

(c) former drug-dependent persons, or drug-dependent persons participating in an established drug treatment program, when authorized by the SAIC;

(d) individuals with two (2) or more felony convictions, when authorized by the SAIC;

(e) individuals who have had a prior Federal or State conviction for a drug felony offense, when authorized by the SAIC;

(f) individuals who have previously been declared unreliable by DEA, or any of its predecessors, when authorized by the Assistant Administrator for Enforcement.

4. The use of an informant shall be reviewed at least every ninety (90) days by the appropriate second-line supervisor, or the higher official indicated in paragraph II.B.3., above. Use of the informant may be continued if it is determined, upon review of his background and performance, that he is qualified to serve in this capacity as provided in paragraph II.B.1., above, and that he has the potential for furnishing information or services which it is believed will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization or the interdiction of significant drug traffic. The SAIC shall be responsible for review of the utilization of each informant at least every 6 months, and continued use of an informant shall be authorized if it is determined that he meets these standards. The SAIC shall be responsible for reporting all such decisions to DEA Headquarters.

5. Informants may be paid money or afforded other lawful consideration. All funds paid to informants shall be accounted for, and specific records shall be maintained of any non-monetary consideration furnished informants.

C. Defendant-Informants

The purpose of this section of the guidelines is to insure that defendant-informants provide information or render services in a manner that recognizes their status as individuals subject to legal sanctions for criminal violations. In addition to the requirements provided in paragraph II.B, use of defendant-informants is governed by the following guidelines.

1. Only individuals who are believed to be able to furnish reliable enforcement information or lawful services, and who are believed able to maintain the confidentiality of DEA interests and activities, may be used as defendant-informants.

2. In addition to the steps necessary to utilize an informant which are set forth in paragraph II B, the approval of the appropriate United States Attorney or other prosecutor shall be obtained prior to seeking the cooperation of or utilizing a defendant-informant. The United States Attorney or other prosecutor shall be informed on a continuing basis of such cooperation or use of a defendant-informant.

3. An individual approved as a defendant-informant may be advised that his cooperation will be brought to the attention of the appropriate United States Attorney, or other prosecutor, and the substance and circumstances of giving such advice shall be documented in writing. The United States Attorney has the sole authority to determine whether a defendant-informant will be prosecuted, and DEA Agents shall make no representations concerning such prosecution. DEA Agents shall make no other representations or recommendations without the express written approval of the SAIC.

4. The SAIC shall obtain the written approval of the Assistant Administrator for Enforcement prior to recommending dismissal of any criminal matter. The SAIC shall inform DEA Headquarters of any other information concerning a defendant-informant's cooperation, or advice offered regarding disposition of a case, or imposition of a penalty.

5. Use of defendant-informants shall be reviewed in the manner prescribed for other informants in paragraph II.B above, and their use may be continued only if they are found to meet the standards set forth therein.

D. Knowledge of Criminal Activity by Informants and Defendant-Informants

1. DEA shall instruct all informants and defendant-informants that they shall not violate criminal law in furtherance of gathering information or providing other services for DEA, and that any evidence of such violation will be reported to the concerned law enforcement authority.

2. Whenever DEA has reason to believe that a serious criminal offense outside its investigative jurisdiction is being or will be committed, it shall immediately disseminate all relevant information to the appropriate law enforcement agency.

3. Whenever DEA has reason to believe that an informant or defendant-informant has committed a serious criminal offense the appropriate law enforcement agency shall be advised by DEA, and the appropriate United States Attorney shall be notified.

4. In disseminating information in accordance with paragraphs D.2 and 3 above, all available information shall be promptly furnished to the appropriate law enforcement agency unless such action would jeopardize an ongoing major investigation or endanger the life of a DEA Agent, informant

or defendant-informant. If full disclosure is not made for the reasons indicated, then limited disclosure shall be made by DEA to the appropriate authorities, to an extent sufficient to apprise them of the specific crime or crimes that are believed to have been committed. Full disclosure shall be made as soon as the need for the restrictions on dissemination are no longer present. Where complete dissemination cannot immediately be made to the appropriate law enforcement agency, DEA shall preserve all evidence of the violation for possible future use by the appropriate prosecuting authority. Nothing herein shall prevent full and immediate disclosure to the appropriate law enforcement agency if in DEA's judgment such action is necessary even though an investigation might thereby be jeopardized.

5. If DEA desires to continue making use of an informant or defendant-informant after it has reason to believe that he has committed a serious criminal offense, DEA shall advise the appropriate United States Attorney and a determination shall be made by him after consultation with the Chief of the Narcotic and Dangerous Drug Section, of the Criminal Division of the Department of Justice, whether continued use should be made of the individual by DEA.

III. UNDERCOVER OPERATIONS

A. Undercover operations involve DEA Agents who assume a fictitious identity or role on a temporary basis (often posing as individuals involved in drug trafficking), and/or the use of informants or defendant-informants under the direction of DEA, to obtain evidence or other information relating to violations of the Controlled Substances Act or other drug laws.

B. Undercover operations conducted by DEA may include employment of a ruse or deception, the provision of a facility or an opportunity for commission of an offense, or the failure to foreclose such an opportunity, or mere solicitation that would not induce an ordinary, law-abiding person to commit an offense.

C. Undercover operations may be authorized where there is reason to believe use of this technique may result in evidence or information concerning significant drug trafficking activities. Undercover operations must be authorized by a group supervisor or Resident Agent-in-Charge. Such authorization must be written; however, in exigent circumstances documentation may be prepared after the undercover operation has been initiated provided oral authorization has first been obtained. Authorizations for undercover operations shall set forth a description of the undercover operation, and enforcement objectives to be met by the undercover operation, and the provisions made for the protection of undercover Agents or informants.

D. DEA may furnish an item necessary to the commission of an offense other than a controlled substance (i.e., a legal chemical essential to drug production), or may furnish services in furtherance of illegal drug trafficking which are difficult to obtain (i.e., sophisticated chemical expertise), upon the authorization of the SAIC, after consultation with the appropriate United States Attorney and with DEA Headquarters. Activity such as furnishing a non-controlled substance, or other services, may be authorized when there is strong reason to believe such activity will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization, or to the interdiction of the flow of drugs from a significant drug trafficking operation.

E. Undercover operations shall not include the furnishing of a controlled substance except in extraordinary cases after consultation with the appropriate United States Attorney, when the Administrator of DEA determines that there is reason to believe such activity will lead to the prosecution of one or more individuals who finance, control, or direct a drug trafficking organization, or to the interdiction of the flow of drugs from a significant drug trafficking operation. In making such determinations the Administrator of DEA shall take into account the type and amount of drug involved; its likelihood of reaching consumers; the number and position in the drug trafficking organization of subjects who have, and who have not, been sufficiently identified to be arrested; the type and amount of evidence necessary to complete the investigation; the time required to attempt to do so; and the likelihood of obtaining such evidence.

F. SAICs shall advise DEA Headquarters immediately if specific information is developed, in the course of an undercover operation or otherwise, regarding the shipment, delivery, or location of substantial amounts of controlled substances. In certain cases it may be appropriate not to seize such drugs in order to enhance the effectiveness of an investigation. DEA may continue an investigation without seizing substantial amounts of illicit drugs only when:

1. Authorized by the Assistant Administrator for Enforcement of DEA or his Headquarters designee. The Assistant Administrator for Enforcement shall consider the factors set forth in paragraph IIIE above, and may authorize the investigation to continue without seizure of the drugs in question if he makes the determination set forth therein. His decision shall be reflected in writing.

2. Where immediate seizure of substantial amounts of controlled substances might result in compromise of an investigation of greater significance than seizure would warrant, or in the death or serious injury to a DEA Agent, informant, or defendant-informant, an immediate decision may be made by the field Agent or his supervisor, consistent with the safety of the Agent, informant or defendant-informant. In such instances the Assistant Administrator for Enforcement shall be promptly notified.

G. While it is recognized that there is an inherent risk of violence in drug trafficking, undercover operations shall not include originating, encouraging, or planning to participate in violent activity. If in the course of an undercover operation there is a prospect of previously unanticipated violence, the Agent, informant, or defendant-informant involved shall make every effort consistent with his personal safety to prevent such violent activity and, to the extent he is not completely successful, to minimize the degree of violence and to avoid participation in it.

H. In conducting undercover operations DEA Special Agents, informants, and defendant-informants shall not attend meetings between defendants and their counsel if attendance can be avoided. If attendance cannot be avoided they shall not report anything they may overhear while present at meetings with counsel, unless they observe the commission of a crime.

I. Informants and defendant-informants used in undercover operations, shall be advised of the standards established by these guidelines relevant to the activities they are asked to undertake on behalf of DEA, and the substance and circumstances of giving such advice shall be documented in writing.

IV. ELECTRONIC SURVEILLANCE AND RELATED TECHNIQUE

Electronic surveillance and related techniques may be employed as follows:

A. Interception of wire or oral communications through the use of any electronic, mechanical or other device ("wiretaps" or "bugs") in accordance with Title III of the Omnibus Crime Control and Safe Streets Act of 1968, as amended, and the related Department of Justice instructions.

B. Recording telephone numbers and related information (but not conversations) by the use of "pen registers," "touch tone decoders," and other devices pursuant to a Federal court order in the nature of a warrant issued under Rule 41 of the Federal Rules of Criminal Procedure.

C. Electronic tracking devices ("beepers") and transponders when authorized by a Group Supervisor or higher authority, and pursuant to a Federal court order in the nature of a warrant of the type issued under Rule 41 of the Rules of Criminal Procedure if installation involves a trespass or if otherwise required by the Federal case law in the judicial district or districts involved.

D. Telephone and transmitters to monitor private conversations with the consent of a party to the conversation pursuant to the provisions of the Attorney General's "Memorandum to the Heads of Executive Departments and Agencies," dated October 16, 1972.

E. Photographic, optical (e.g., binoculars), electro-optical (e.g., night vision equipment), and television equipment as surveillance aids or for recording evidence, pursuant to the provisions of the DEA Agents Manual.

F. Electronic, magnetic, vibration sensors, and radar equipment to detect the movement of persons, vehicles, vessels, and aircraft pursuant to the provisions of the DEA Agents Manual.

G. No other form of electronic surveillance or related technique may be utilized.

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

WEDNESDAY, JULY 21, 1982

U.S. Senate,
Select Committee To Study Law Enforcement
Undercover Activities of Components
of the Department of Justice,
Washington, D.C.

The committee met, pursuant to notice, at 10:06 a.m., in room 318, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias, Huddleston, Simpson, Rudman, DeConcini, and Leahy.

Staff present: James F. Neal, chief counsel; and Malcolm F. Wheeler, deputy counsel.

Senator Mathias. The committee will come to order. Our witness today is Mr. Francis M. Mullen, Jr., Executive Assistant Director of the Federal Bureau of Investigation.

Mr. Mullen, under the rules of the committee, as you are aware, we are required to administer an oath to all witnesses, so will you please rise and raise your right hand? Do you swear the testimony you shall now give before this committee [2] will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. Mullen. I do.

Senator Mathias. Mr. Ricks, will you be testifying today?

Mr. Ricks. Senator, I will be offering assistance, perhaps; I may make a statement or two.

Senator Mathias. Well, you are bound by the oath that you took yesterday.

Mr. Ricks. Yes, sir.

Senator Mathias. Have you received a copy of Senate Resolution 350 and a copy of the rules of this committee with respect to——

Mr. Mullen. Yes, I have, Mr. Chairman.

Senator Mathias. Will you proceed with your statement?

STATEMENT OF FRANCIS M. MULLEN, JR., EXECUTIVE ASSISTANT DIRECTOR, FEDERAL BUREAU OF INVESTIGATION

Mr. Mullen. I will, Mr. Chairman. Thank you very much.

I appear before you today to assist this committee in fulfilling its important responsibility under Senate Resolution 350.

Mr. Chairman, I have a somewhat lengthy statement; however, I believe it important that I read the entire statement to tell the story of Abscam. With your permission, I will proceed [3] with the entire statement.

Recently, Attorney General William French Smith identified what the Department of Justice now regards as a fundamental tenet in its efforts to combat clandestine criminal activity: "An enforcement program can never succeed without the effective use of undercover operations."

Many of the FBI's priority investigative programs—organized crime, white-collar crime, public corruption and major narcotics trafficking—focus on activities that are carefully concealed from the public's view. And yet the public often is the unknowing victim of these crimes. In many cases involving organized crime or consensual crimes such as narcotics violations, bribery, or the fencing of stolen goods, there is often little evidence of a criminal act, and usually the parties to the transactions are the only witnesses. In many situations, undercover operations provide the only means available to the Government to participate in—and thus to detect—the criminal activity. Undercover operations are the cutting edge of the FBI's ability to ferret out concealed criminal activity.

The FBI, through its commitment of resources and highly trained personnel, has developed a record in the use of this technique which we are proud of. Combined recoveries in these operations for fiscal years 1980 and 1981 total over $109 million, and there were 2,723 arrests and 1,064 convictions resulting from these operations in the same 2 [4] years.

Yesterday, Oliver B. Revell, Assistant Director of the FBI's Criminal Investigative Division, identified for you the constitutional and legal principles which the Government follows in the use of this technique. He also explained that the FBI and the Department of Justice have adopted procedures to control the use of the undercover technique which go beyond these basic safeguards in protecting the rights of the American public. Today, I will discuss the policies and controls that were in effect when the Abscam investigation began, and those that were developed during the course of the operation.

I was appointed to serve as Deputy Assistant Director of the FBI's Criminal Investigative Division on October 31, 1978 and initially had no direct responsibility for the Abscam investigation, which actually began several months earlier.

I was subsequently appointed chairman of the Criminal Undercover Operations Review Committee and chaired the first meeting in November 1978. From that point on, I worked with the procedures that were in place when Abscam began, and I helped to shape the policies and controls that are in place today.

On October 7, 1979, I was named Assistant Director of the Criminal Investigative Division, and on June 5, 1980, I was appointed Executive Assistant Director for Investigations. [5] Although I was not initially involved in Abscam, I later was extensively involved in this and numerous other investigations.

When the Abscam investigation began, the FBI's undercover policy was governed by general legal safeguards and by specific procedures set forth in our Manual of Investigative Operations and Guidelines. At that time, a special agent in charge could approve undercover operations in his respective territory when the criminal activities fell within the jurisdiction of the FBI, when the activity could be financed from the Field Support Account and were within the SAC authority for expenditures of $1,000, and when no reassignment of personnel was to be involved. All undercover operations of a long-term duration—and by this, we mean 6 months or more—and involving expenditures of over $1,000 required FBI Headquarters level review and approval.

When the field requested approval for an operation, all aspects of the proposal were to be examined to insure strict compliance with FBI policy, departmental instructions, and legal precedents. All legal questions not previously addressed were referred to the FBI's Legal Counsel Division for analysis and review. If there was uncertainty as to the legality of an aspect of an undercover operation, advice was sought from the Office of Legal Counsel of the Department of Justice. All property-related undercover operations, such as Abscam, when it began, prior to their implmentation, were routed through the [6] FBI's Legal Counsel Division for a final analysis and review.

In March of 1978, prior to the FBI Headquarters approval of the Abscam operation, acting Deputy Attorney General Benjamin Civiletti expressed the desire to have guidelines drafted regarding the FBI's use of the undercover technique. There was substantial precedent for the drafting of guidelines at that point in time because work had already been completed on Attorney General's Guidelines for Domestic Security Investigations and for the Use of Informants in Domestic Security, Organized Crime, and Other Criminal Investigations.

Representatives of the FBI's Criminal Investigative and Legal Counsel Divisions began to meet with representatives of the Department of Justice's Office of Legal Counsel and Criminal Division to prepare for the drafting of the guidelines. A number of issues were discussed in connection with the drafting of the guidelines: Entrapment, creating Federal jurisdiction, sale of stolen property, creation of a business front, operation of a viable business front, compliance with title 31, United States Code, section 484—offsetting expenses with income generated by an undercover business—participation in a criminal act by a special agent, sham criminal process and arrest of undercover agents, utilization of existing companies to support undercover agents, civil and criminal liability of the undercover agent in the Bureau, and use of false identity, joint operations with local authorities, [7] border crossing and foreign travel by undercover operatives, and gifts of equipment from the private sector for use in undercover operations.

A few months after the Abscam operation was officially approved at FBI Headquarters, but before the investigation focused on public corruption, Director Webster established the Criminal Undercover Operations Review Committee to provide an ongoing institutionalized method of evaluating proposals, recognizing the potential pitfalls, and giving guidance on such matters as avoiding injury to third parties. The Committee was an outgrowth of the Director's concern over the increasing complexity of undercover operations. In focusing the attention of the FBI's Legal Counsel Division on the task of addressing his specific concerns in the area of undercover operations, the Director instructed as follows: "I want to be sure I am on top of any activity where sensitive legal rights or issues are at stake." The Committee was established with membership from the FBI Headquarters officials assigned to the various support divisions, members of the FBI's Legal Counsel Division, and subsequently included representatives of the Department of Justice. I was appointed Chairman and was given the responsibility of organizing and directing its efforts. The Committee was formed and operating in time to review and recommend approval of the first three proposed bribe payments in the Abscam operation.

[8] It is important to note at this point that the two most important controls over the FBI's undercover operations in existence today—the Attorney General's Guidelines on FBI Undercover Operations and the Criminal Undercover Operations Review Committee—were either under active consideration or actually in place prior to the time the Abscam operation began to focus on public corruption. As you can well observe from the list of legal issues that were to be considered in the drafting of the Attorney General's Guidelines, there was an intense effort not just to respond to sensitive legal issues in the undercover operations but to anticipate and provide procedures for dealing with them as well.

Many other policies and procedures that are contained in the Attorney General's Guidelines on FBI internal procedures today grew out of the Abscam investigation and the supervisory controls that were instituted in response to the needs of that investigation. Before focusing on the policies and supervision that developed during that operation, however, it would be helpful to run through a brief chronology of the Abscam investigation as Director Webster did in his testmony before the House Subcommittee on Civil and Constitutional Rights on April 29, 1982.

The Abscam investigation began in the Hauppauge office of the FBI in Long Island, N.Y., in early 1978. Agents there, [9] headed by senior Supervisory Special Agent John Good, began working with a convicted swindler, Melvin Weinberg, who had agreed to cooperate with the Government. The objectives of the operation were to investigate property crimes, including the recovery of stolen or forged securities and artwork, as well as pursuing the leads already established by earlier investigations into the dealings of organized crime operations in Long Island, N.Y., and several other parts of the country. The basic plan was simple and similar to one which Weinberg had run illegally before he was arrested and convicted. Weinberg and agents of the FBI posed as American representatives of wealthy Arab businessmen interested in shrewd investments in this country, and the word was spread that there was easy money available for shady transactions. To provide a front for this operation, they created Abdul Enterprises, Ltd., from which the name Abscam was derived, and established an office in Long Island.

Up to this point, the investigation adhered to its original investigative objectives and as a result of the efforts of Abdul Enterprises, the Government was able to recover significant amounts of stolen art and securities. In one instance, the FBI arrested two art thieves who were responsible for the theft of the paintings, one of which was stolen from the United Nations in New York City in 1966 and valued at approximately $1 million. These two thieves [10] were subsequently convicted.

In the fall of 1978, one of the groups which had dealt with Abdul Enterprises in various criminal matters raised a new prospect that focused the attention of the Abscam operatives for the first time on public corruption. These individuals described in detail the corrupt relationship they had with the mayor of Camden, N.J., Angelo Errichetti, and the influence he claimed he could command in that State. Errichetti was described as a corrupt politician who could obtain an Atlantic City casino license in return for a bribe. Recognizing that the fictitious Arabs were interested in investing in legalized gambling, these individuals offered to serve as brokers between Errichetti and the Arabs.

Meetings were held between Errichetti and the Abscam operatives. Errichetti boasted that with his assistance, the operatives could obtain a gambling license but without his assistance, it would be impossible. Errichetti indicated that a cash payment would be necessary in order to obtain his assistance.

When Errichetti stated that he would accept a bribe, the New York office of the FBI, with the concurrence of the strike force, furnished FBI Headquarters with the details. They also requested the authority to make a $25,000 cash bribe to Errichetti. The request followed the FBI Headquarters chain of command where it was presented to the Undercover Review Committee. At [11] this time, the decision was made that all bribes would be documented on video and audio tape. This procedure was followed throughout Abscam. On January 20, 1979, a $25,000 bribe was accepted by Errichetti.

Meetings between the operatives and Errichetti continued, and arrangements were made for the payment of a $100,000 bribe to Kenneth MacDonald, vice chairman, New Jersey Casino Control Commission. With the concurrence of the strike force, our New York office requested and received FBI Headquarters authority to make this payment. This payment was also approved by the Undercover Review Committee.

A meeting was scheduled with Errichetti and MacDonald. On March 31, 1979, Errichetti was furnished with a bribe payment of $100,000 in the presence of and on behalf of Kenneth MacDonald. At this time, Errichetti demonstrated through words and actions that he was MacDonald's intermediary.

It should be noted that it was not standard procedure for the Undercover Review Committee to approve individual bribe payments; neither current nor then-existing policy required this level of approval. It was never the purpose of the Committee to approve day-to-day operational decisions. Therefore, after the third proposed bribe payment was approved by the Committee—for a public official who was alleged to be amenable but which never took place—the practice was discontinued. It was then decided that the Director or another [12] appropriate FBI Headquarters executive would approve the individual bribe payments on behalf of the FBI.

Errichetti was also directly responsible for developing another case—this one involving Senator Harrison A. Williams. As early as January 10, 1979, Errichetti had mentioned Senator Williams and his associates. On January 11, 1979, Errichetti stated that Senator

Williams and his associates were looking for financing for a mining venture in Virginia. Subsequent investigation and meetings with Senator Williams and his associates determined that Senator Williams had a hidden interest in the mining venture. On June 18, 1979, Senator Williams met with our operatives and offered to use his influence and official position to benefit the mining venture.

In the spring of 1979, Errichetti, still believing the Abscam operatives to be agents of wealthy and unscrupulous Arab sheiks, provided them a written list of names of those who he claimed were corrupt Federal and State politicians. It is important to note that Errichetti first brought up these names, not the operatives. This became a pattern which was followed throughout the operation. Errichetti claimed he could put the operatives in touch with these public officials for any corrupt purpose.

In late July of 1979, aboard a yacht in Florida, a meeting was held with Errichetti and others to discuss a proposed casino transaction. Also present at the meeting [13] were individuals whom Errichetti had identified to the FBI operatives as being instrumental in the casino deal. These included Louis Johanson, a Philadelphia City Councilman, and his law partner, Howard Criden. During the cruise, FBI undercover agent Anthony Amoroso, posing as the Arabs' right-hand man, Tony DeVito, remarked that the sheiks might have to flee their country and seek asylum in the United States. He said that the sheiks did not want to face a situation like that which had recently confronted Anastasio Somoza, the deposed Nicaraguan leader who had been expelled from this country shortly after his arrival. Errichetti, on his own initiative, with the assistance of Criden, began to identify United States Congressmen who, in return for cash, would use the influence of their elected offices to guarantee asylum for the fictitious sheiks.

On March 30, 1979, Errichetti had previously supplied the name of Congressman Michael Myers as a corrupt political figure. Errichetti, in a series of telephone conversations with Abscam operatives in July and August 1979, claimed to have commitments from Congressmen Myers and Lederer to meet with the sheiks' representatives in order to provide immigration assistance. He subsequently advised the operatives that the support of each Congressman would cost $100,000. After consulting with FBI Headquarters, the operatives were able to reduce the demand to $50,000 each. Payments of $50,000 were [14] subsequently made to both Congressman Myers and Congressman Lederer.

Howard Criden, with the assistance of Joseph Silvestri, who introduced our agents to Congressman Thompson, had strong political ties in New Jersey. On October 9, 1979, our agents made a $50,000 payment to Congressman Thompson. During the meeting, Thompson himself assumed the role of a corrupt influence peddler and suggested that he had numerous friends who could assist us, including a Congressman from New York. We later learned that he was referring to Congressman John Murphy.

Acting upon the suggestion of Congressman Thompson, Howard Criden made arrangements for Congressman John Murphy to meet with the undercover operatives, and on October 20, 1979, he was paid $50,000 in exchange for the commitments he made to assist in the immigration problem.

Through Congressmen Thompson and Murphy, the undercover operatives were introduced to Congressman John Murtha, who became a key Government witness.

During October 1978, in a recorded telephone conversation with Weinberg, John Stowe, a South Carolina businessman, advised that he knew a Congressman who was "as big a crook" as he, Stowe, was, and who would assist in transactions involving forged certificates of deposit. In November 1979, recalling Stowe's representations, he was recontacted by the [15] Abscam operatives. Stowe was asked if he was still dealing with the Congressman that he had previously mentioned. Stowe identified the Congressman as John Jenrette and indicated that he still had contact with him. Our operatives then asked if Congressman Jenrette would be interested in assisting the sheik in his immigration problems, should they arise, in return for cash. Stowe indicated that Congressman Jenrette would be interested and that he would schedule a meeting.

In December 1979, our operatives had several meetings with Stowe and Jenrette, at which time Jenrette offered to assist us for $50,000. After two meetings and several phone calls with Stowe and Congressman Jenrette, Stowe accepted a $50,000 bribe on behalf of Congressman Jenrette. Congressman Jenrette confirmed this payment in a telephone conversation which was recorded. Several days later, Congressman Jenrette reconfirmed his receipt of the money in a videotaped face-to-face meeting with our operatives.

During this period, William Rosenberg, a corrupt influence peddler and con man from New York who had been responsible for introducing us to Mayor Errichetti, now introduced us to Stanley Weisz, Eugene Ciuzio, and Congressman Richard Kelly. Congressman Kelly, in exchange for his offer of assistance in connection with the immigration problem, was paid a bribe of $25,000 in January 1980.

In January 1980, Howard Criden led our operatives to [16] George Schwartz, Philadelphia City Council president; Harry P. Jannotti, Philadelphia City Councilman; and Louis Johanson, Philadelphia City Councilman. As you will recall, Johanson had attended the July 1979 meeting held in Florida. It was represented to our operatives that these individuals could assist in obtaining permits which would be necessary for construction work that the Arabs wanted to finance in Philadelphia. Johanson was paid $25,000 on January 21, 1980; Schwartz was paid $30,000 on January 23, 1980; and Jannotti was paid $10,000 on January 24, 1980. No further bribe payments were made, and the covert phase of the Abscam investigation ended on February 2, 1980.

Let me digress for just one moment. There was never any question about the obligation of the FBI to investigate the public corruption that was uncovered in the early stages of the Abscam investigation. The information provided by Angelo Errichetti was specific and of such a serious nature that the Abscam investigation redirected its primary focus from property crimes to public corruption. The criminal activities that were uncovered in the initial stages of Abscam have been described by Judge Pratt as:

> A cesspool of corruption swirling around Angelo Errichetti, who was mayor of one of the largest cities in southern New Jersey, as well as a member of the New Jersey State Senate, and who openly claimed access to the strings of power in the White

House, in the New Jersey [17] State House, in New Jersey's casino control commission, in labor unions, and in organized crime.

Throughout the entire Abscam investigation, the influence of these corrupt influence peddlers such as Errichetti was demonstrated through the actions and statements of the elected officials they brought to the meetings who, in turn, were willing to trade the influence of their public office for monetary gain. This was evident from the statements of Congressman Michael "Ozzie" Myers, during his first meeting with the Abscam operatives. Myers stated that he uses all sorts of connections in the State Department, and through his position as Congressman, he could introduce a private bill to keep somebody in the country. Myers said, "It is a trading game down in Washington." Myers mentioned he had a close colleague who was a member of the Ways and Means Committee, and Weinberg asked if they could assure the Arab sheik that he would have no problems. Myers replied, "With me in his corner, his chances are 100 percent better than they would be without somebody like me in his corner." Myers also stated that he would "deliver a lot of other people in the man's corner," and he approved of the Abscam operatives' method of getting legislative support by stating that "money talks in this business and bullshit walks. And it works the same way down in Washington * * *. I got a lot of guys who is willin' to do business."

In the case of Congressman Frank Thompson, Jr., as [18] previously mentioned, the Congressman accepted a bribe of $50,000 and then offered to bring in another Congressman to the undercover operatives.

The Abscam operation thus presented the FBI with unprecedented leads into ongoing public corruption. If we had not gone forward with this investigation, if we had not followed our leads to their logical conclusions, the FBI would not have fulfilled its obligation to our Nation. The American public expects the FBI to investigate criminal activity without fear or favor, and neither the FBI nor the Congress could accept the premise that a major investigation had not been pursued because it happened to involve prominent public officials.

The Abscam investigation, therefore, posed a unique challenge to the FBI and required unique controls and supervision from the very early stages. It was recognized as soon as this investigation focused on public corruption that there were sensitive issues concerning the reputations of the public officials whose names were raised by the corrupt influence peddlers or corrupt middlemen. Nevertheless, the allegations of wrongdoing had to be pursued and specific procedures and methods of supervision were developed to permit us to meet these investigative challenges in an appropriate and effective manner.

One aspect of this investigation was recognized [19] immediately as particularly sensitive. In dealing with these corrupt influence peddlers who asserted so boldly their influence over those in positions of authority, it was evident from the outset that controls needed to be established to reduce the likelihood that innocent public officials would be brought to an undercover meeting. Although we could not eliminate all possibility that completely innocent public officials might be brought in, ground rules were established and communicated to all involved personnel to eliminate any ambiguity about who should be brought in to a meeting. First, our undercover operatives firmly and repeatedly instructed the influence peddlers not to bring public officials who did not understand the purpose of the meeting. Second, the public official had to make assurances that he would provide assistance. Third, the public official had to acknowledge receipt of the bribe money.

While the corrupt influence peddlers obviously had little reason to offend the sheik or risk exposing the corrupt operation by violating these requirements, a backup control was put in place. The undercover agents were instructed that no money should pass until criminal representations had been made by the public official. In two meetings with public officials, it was obvious that the corrupt influence peddler had not briefed the public official on the true purpose of the meeting. These public officials did not give the [20] necessary assurances, no bribe payment was made, and the FBI's safeguards worked.

I can state unequivocally that there was no targeting of public officials. There was no mention of any elected public official's name by the FBI undercover operatives prior to that name being raised by one of the corrupt influence peddlers. Then-Assistant Attorney General Heymann has testified that during the course of this investigation there was no intention to "test" the corruptibility of Congressmen. Instead, the FBI was discovering the actual extent of the influence of these corrupt influence peddlers which, as it turned out, was considerable.

Additional controls were also necessary to allow the Abscam undercover team, the supervisory personnel, and the prosecutors the opportunity to assess the credibility of the corrupt influence peddlers. When names were suggested by the corrupt influence peddlers, the Abscam undercover team followed a standard procedure. The names of these officials or the propositions made by the corrupt influence peddlers were usually communicated directly to the cooperating witness, Melvin Weinberg, who was instructed to take no action on these propositions and to make no commitments. The information was then relayed to one of the special agents, and Weinberg was told to stall the corrupt influence peddler by saying that the information would have to be presented to his [21] superiors before any action could be taken. If it was subsequently decided to go forward with an undercover meeting, Weinberg was instructed to schedule the meeting between the undercover agents and the corrupt influence peddler. During the meeting the undercover agent would verify the information given to the informant by the corrupt influence peddler and would replace the informant as the dominant person for any future contacts. In this manner, the investigation was designed to insure that the undercover agent would play a major role in dealing with public officials.

Except in the case of Senator Williams, Weinberg never met with any Congressman prior to a scheduled meeting without the undercover agents, and in any meetings held with Congressmen, as indicated above, the undercover agent always played the major role. In the one instance in which Melvin Weinberg met with Senator Williams prior to the meeting with the undercover agents, the supervisory agents immediately corrected the problem by instructing Weinberg that he was never again to meet with Congressmen alone. The practice was never repeated.

The activities of the cooperating witness, Melvin Weinberg, were also closely supervised throughout Abscam. Weinberg had extensive connections in the underworld and with a number of confidence men. Moreover, Weinberg, like so many of our cooperating witnesses or informants, provided the [22] undercover operatives with an introduction to the criminal elements, lending instant credibility to the operation.

Following his conviction for fraud by wire, mail fraud, and conspiracy, Weinberg was put on probation in the U.S. District Court in Pittsburgh and he began his work with the FBI under the restrictions of this probation agreement. In the early stages of Abscam, Weinberg was told to contact those individuals who would be able to provide the FBI with evidence of illegal or fraudulent securities or stolen art objects, and Weinberg was instructed further to tape any material conversations which had a direct bearing on the undercover operation.

It is indicative of the close supervision of Weinberg that either the undercover agents would be present during his meetings or the meetings would be monitored by supervising agents. Upon the initiation of the public corruption cases the supervision of Weinberg was intensified. He was instructed to tape all conversations whenever possible. Additional agents were assigned to the undercover operation in order to insure that an agent was present at the time of the meetings and even during casual time spent by Weinberg with potential subjects.

As an example of this control and supervision, an undercover agent was assigned as a chauffeur in order to monitor further the conversations of Weinberg. During any [23] significant meetings, audio and video facilities were set up in such a way that the meetings could be monitored in an adjacent room by Supervisor John Good and on some occasions by strike force attorneys. When specific dates were arranged for payoffs, the undercover team would set up in a designated location several days prior to the scheduled meeting and would spend their entire time together as a team, Weinberg included. This allowed 24-hour monitoring of Weinberg's activities for those days immediately prior to the major meetings.

During those periods of time when Weinberg returned to his home, when no pertinent Abscam meetings were being held, he received phone calls from the subjects of the investigation. Supervisor Good and Special Agent Amoroso contacted Weinberg at home on a daily basis and were told about any contacts from the subjects. Whenever a pertinent conversation took place, a special agent was dispatched to pick up the recording of the conversation and, on some occasions, personally delivered the tape to FBI Headquarters. If the contacts were insignificant, Weinberg retained the tapes until his next scheduled meeting with the agents.

Melvin Weinberg was probably supervised more extensively during the course of the Abscam investigation than any other cooperative witness in the history of the FBI's undercover program. As Judge Pratt concluded in his Memorandum and Order Denying "Due Process" and Other Post-Trial Motions of Congressmen [24]

Myers, Lederer, Thompson, and Murphy and corrupt influence peddlers Criden, Errichetti, and Johanson:

> The supervision imposed on Weinberg was more than adequate to the circumstances of this investigation. Weinberg recorded literally hundreds of conversations and telephone calls outside of the agents' presence.

I have a line missing in my statement, and you may have one missing, too. If I may——

Senator MATHIAS. Without objection, you may continue, and you may amend your statement to add that line.

Mr. MULLEN. OK. Thank you, Mr. Chairman.

> While Weinberg was given some discretion as to what calls to record, this court is satisfied that he exercised that discretion by recording all calls and conversations that he could consistently with safety and convenience. There is no evidence presented by any of the defendants that a particular phone call or conversation exonerated him, or that the lack of a particular recording in any way prejudiced him.
>
> Moreover, and contrary to defendants' assertions, Weinberg was supervised extensively by the FBI. In an investigation that spanned many months and meetings all along the east coast, Weinberg was in virtually daily contact with Amoroso, and his recordings were delivered to the FBI for transcribing on a periodic basis. Most importantly, the key events on which the Government relied in presenting its cases, the appearances before the videotape cameras, took place in [25] the presence of the FBI agents, and occasionally under the direct supervision of an attoreney from the Eastern District Strike Force. Beyond that, supervising Agent Good and Strike Force Chief Puccio continually monitored the progress of the investigation, and each reported regularly to their respective superiors in the Bureau and the Department of Justice.

That concludes the quote from Judge Pratt's finding.

The level of supervision and control of this investigation by FBI Headquarters officials, by strike force attorneys and Department of Justice officials was unprecedented. The procedure for authorizing bribes, for example, was as follows: Supervisor Good would confer with Strike Force Chief Thomas Puccio and often with strike force attorneys Lawrence Sharf and John Jacobs. If Puccio approved, the FBI Headquarters Supervisor was advised by phone and a teletype was sent to him, containing the details so that he could prepare an internal FBI memorandum with appropriate recommendations to be presented to FBI management personnel for approval.

Indexes checks were then conducted to gather information on the subjects from FBI Headquarters files. The final decisions authorizing bribe payments to a Congressman were made by Director Webster or whoever was acting in his absence. It should be noted that prior to the authorization of a payment, the memorandum was reviewed and initialed by the unit chief, [26] the section chief, the Deputy Assistant Director, the Assistant Director, and on three occasions, the authorization of the bribe payment was made by the Criminal Undercover Operations Review Committee. Philip E. Heymann, then Assistant Attorney General in charge of the Criminal Division; Irvin D. Nathan, then Deputy Assistant Attorney General of the Criminal Division; David Margolis, Chief of the Organized Crime Section, and Thomas Puccio were all informed of the scheduled meetings in advance.

Furthermore, as the operation focused more and more on public corruption the amount of FBI Headquarters supervision over the day-to-day operational decisions of this investigation increased. Field and headquarters supervisors remained in contact far more frequently than is customary in ongoing investigations. In Abscam, there was a steady flow of teletypes between New York, Philadelphia, Washington Field, Newark, Miami, and FBI Headquarters. The Director was fully briefed on the events, and generally made it a practice to view videotapes within a day or two of the meetings. The Director also conferred with Assistant Attorney General Heymann and periodically made direct contact with Strike Force Chief Thomas Puccio.

This investigation was also closely monitored by attorneys of the Organized Crime Strike Force for the Eastern District of New York. After Angelo Errichetti, mayor of Camden, N.J., [27] entered the scene and the Abscam investigation started to focus on public corruption, Supervisor Good and Strike Force Chief Puccio maintained daily contact. Before significant meetings with political figures, the operatives met with strike force attorneys Jacobs and Sharf and generally with Puccio himself, to discuss the upcoming meeting. Jacobs monitored numerous meetings with public officials from an adjacent room as they occurred and Sharf monitored three meetings. Supervisor Good, at the direction of FBI Headquarters, monitored all meetings and had ultimate authority to approve or withhold payment.

As they were needed throughout the course of the investigation, conferences were held at various locations to insure that all instructions were being adhered to and to insure that the future direction and strategies were properly formulated. Numerous special conferences were held between March 7, 1979 and January 28, 1980, and specific written instructions on undercover policy were sent from FBI Headquarters to the field between July 25, 1979 and January 24, 1980.

The controls and supervision of the Abscam investigation have been the subject of searching scrutiny in pretial proceedings, in the many trials of the public officials and corrupt influence peddlers, and in extensive post trial hearings. The results of this process of judicial review have confirmed my belief that the Abscam investigation was properly [28] conducted without regard to political pressure or favor and was the most closely controlled and supervised undercover operation in the history of the FBI.

Mr. Chairman, I am now prepared to be as responsive as I can to any questions that the committee may have.

Senator MATHIAS. Thank you very much, Mr. Mullen. We appreciate your statement.

We will begin the questioning with our Chief Counsel, Mr. Neal.

Mr. NEAL. Mr. Chairman, with the permission of members of the committee, I would like to make a part of the record the guidelines existing during the Abscam investigation.

Senator MATHIAS. Without objection, it will be part of the record.

[See exhibit 9, pages 227–31 *infra.*]

[29] Mr. NEAL. Mr. Mullen, you and I have discussed this matter on at least two occasions, and we have gone over records that we will use. You understand that we have made our own markings on these records by virtue of restrictions put on us by the Department of Justice?

Mr. MULLEN. I do.

Mr. **Neal**. You are aware, Mr. Mullen, that, of course, the existing guidelines as now written were not in effect during the Abscam investigations?

Mr. **Mullen**. I am aware of that. They were under development at that time.

Mr. **Neal**. However, you are also aware that in announcing the existing undercover guidelines, Attorney General Civiletti stated: "In large part, they reaffirm existing Bureau practices and procedures in this area."

Mr. **Mullen**. In a large part, yes.

Mr. **Neal**. And in testimony given heretofore, Mr. Heymann stated that these safeguards were in effect during the Abscam investigation:

> As a first safeguard, we only initiate investigations, and we only use the undercover technique, when we reasonably suspect that criminal activity of a given type or pattern is occurring or is likely to occur. We impose upon ourselves the requirement that there be a well-founded suspicion of criminal activity in a sector or area before [30] commencing an undercover operation.
>
> Safeguard No. 2. Most important is the second major safeguard followed in every undercover operation, of making clear and unambiguous to all concerned the illegal nature of any opportunity used as a decoy.
>
> The third important safeguard to undercover operations is our modelling of the enterprise on the real world as closely as we can.

These are said to be the safeguards in effect during Abscam, and the purpose of my questions, as the chairman stated yesterday, will be to determine, in this operation, at least, and later on in some other operations, how the undercover operation is actually conducted in the field and whether it comports with those safeguards, you understand?

Mr. **Mullen**. Yes, I do.

Mr. **Neal**. Abscam was approved by a document in June of 1978—I think you are familiar with that document.

Mr. **Mullen**. Yes, I am familiar with the document.

Mr **Neal**. OK. It was approved as a result of a request from Brooklyn-Queens in May of 1978; is that correct?

Mr. **Mullen**. I do not have the document in front of me. If I could get the document—I will accept that that is correct.

Mr. **Neal**. Now, the original document requesting approval and the approval document to commence Abscam had nothing to [31] do with political corruption.

Mr. **Mullen**. That is correct.

Mr. **Neal**. However, as early as early January of 1979, the Brooklyn-Queens field office refers to Abscam as "an undercover operation targeted against high level political corruption." Can you tell us what happened in the interim that would change an operation to recover stolen securities, art, and indeed seeking information on the underworld, to undercover operations targeted against high level political corruption?

Mr. **Mullen**. Yes, I can. The Abscam operation was dealing with many con men, criminals, and corrupt individuals. These individuals introduced the Abscam undercover operatives to Angelo Errichetti, the mayor of Camden, N.J. The focus at that time became the casino gambling license in New Jersey. As the dealings with Mayor Errichetti progressed, it was indicated by him that he had the influence politically in New Jersey, and as I indicated in my statement, at the national levels also. It was at that point that the investigation changed direction.

Mr. NEAL. All right. Is it your testimony, then, that the reasonable indication of criminal activity in a particular area—which is one of the safeguards before you open or, I assume, totally change the direction of operation—came in this case with Mayor Angelo Errichetti?

Mr. MULLEN. Basically, that is correct.

[32] Mr. NEAL. The problem I have with that is that in a taped transcript taped on September 13, 1978, before anybody ever mentions Angelo Errichetti, Mel Weinberg is talking about getting politicians involved. And that is a transcript of a conversation involving Mel Weinberg on September 13, 1978, before there has ever been any mention of Angelo Errichetti. My question to you is—and I am not saying it is good or bad that he mentioned that, but we are testing how these things change and develop, you understand—my question is, was this something that Mel Weinberg developed on his own as he is spinning out this scenario, or was this a deliberate decision made by the FBI to go after politicians?

Mr. MULLEN. You have to realize that Mel Weinberg was a con man, and as a con man, he was one to seize upon any opportunity. I would have to see the transcript to know exactly what we are talking about, but I am advised that this involved actually Goldcon, another operation in which Mel Weinberg was involved and that dealt with the zoning variance or something at a local level. Again, until I see the document, I would have to——

Mr. NEAL. Well, at some point while you are here, look at pages 42, 43, 44, and 68 of this transcript and see if Mel Weinberg is not saying, "* * * and we own the politician outright. Then, I say you have got to deal," referring to getting a politician in his pocket, and so on.

[33] Mr. MULLEN. Yes.

Mr. NEAL. Now, if this is a Mel Weinberg carrying on of a scenario, that is one thing. If it is a development by the FBI, a decision by the FBI to go after a politician, then my next question, naturally, would be: Where is your reasonable suspicion to change that direction?

Mr. MULLEN. You have to realize that much information came to us through Mel Weinberg. Now, it could have been many conversations along this line. What we are referring to when we say it changed direction was when officially, FBI Headquarters was aware that we were into this area, and at that point the investigation turned direction. You could not pick out any one conversation and say it was based on that particular conversation.

Mr. NEAL. I gather your answer, then, is that as far as you know, this was simply a Weinberg conversation, talking about politicians, in September of 1978, and was not a deliberate decision and approval by the FBI to change the direction at that point?

Mr. MULLEN. At that point, that is correct. You will find con men will often talk in many areas and really have no basis for it. But my official position, and as I recall the Abscam investigation, it changed direction when Mayor Errichetti became involved.

Mr. NEAL. But there is another conversation involving [34] Weinberg, a couple of weeks later on October 6, 1978, when Weinberg is again—and this is before Errichetti has surfaced—and he is referring to "getting the juice" in Atlantic City, talking about making a loan in Atlantic City, and Mel Weinberg is introducing the idea that if you can "get the juice" in Atlantic City, "Then, we go all the way, for everything."

Now, again, this is Mel Weinberg introducing, in the jargon of the trade, "juice" in Atlantic City. So my question is here are two cases——

Mr. MULLEN. Who is he talking to? I do not know who he is talking to here.

Mr. NEAL. He is talking to Rosenberg.

Mr. MULLEN. Yes. As I indicated, it was then Rosenberg who brought us Angelo Errichetti. So that is the traces——

Mr. NEAL. Yes, sir, but after these two conversations, he brought you Angelo Errichetti.

Mr. MULLEN. Uh-huh.

Mr. NEAL. I have read the transcripts here, and I see no mention of Errichetti in these conversations, yet I do see Mel Weinberg directing his attention, at least, to politicians.

Mr. MULLEN. That could have been the genesis. I am not saying that it is or is not, until I have read the entire transcript. But as I pointed out earlier, it was when Errichetti entered on the scene that we had somebody with [35] the apparent knowledge and wherewithal to influence politicians at all levels.

Mr. NEAL. So, then, your answer really is that as far as the FBI is concerned, this was not a deliberate discussion, "Mel Weinberg, you go out to these people and talk about getting politicians involved," when he had those conversations in September and October of 1978?

Mr. MULLEN. As far as the FBI is concerned?

Mr. NEAL. Yes.

Mr. MULLEN. To my knowledge, that is correct.

Mr. NEAL. Now, in any undercover operation—and this is reflected quite clearly in the Guidelines on Confidential Sources and Informants—the selection of a cooperating individual or informant is very important, is it not?

Mr. MULLEN. Is very important?

Mr. NEAL. Important.

Mr. MULLEN. Yes, it is.

Mr. NEAL. And indeed, Attorney General Levi's guidelines, in the main, were in existence during the Abscam operation from beginning to end?

Mr. MULLEN. I believe they were.

Mr. NEAL. All right. And in those guidelines, the Levi guidelines, which were in existence in 1978, they require a finding of suitability and purpose before the FBI accepts a man as an informant or a cooperating individual; is that [36] correct?

Mr. MULLEN. Correct.

Mr. NEAL. All right. By the way, Weinberg was selected as the cooperating individual in Abscam at the time the Field Office requested approval of Abscam as an undercover operation in May of 1978; you are aware of that?

Mr. MULLEN. I again would have to see a document as to exactly when he was approved for use.

Mr. **Neal**. OK, but is was sometime in the summer of 1978, correct?

Mr. **Mullen**. For the sake of this, let us say it was, yes.

Mr. **Neal**. Were you aware that—and in your statement, you talk about the selection of Weinberg at page 7. You say that "John Good then began working with convicted swindler, Melvin Weinberg, who had agreed to cooperate with the Government," and you say this is in early 1978. Were you aware that Melvin Weinberg had been a Government informant since 1968 or 1969?

Mr. **Mullen**. Yes, I was.

Mr. **Neal**. Were you aware that before Abscam—that is, in 1976-77, the Government, the FBI, terminated his services as an informant?

Mr. **Mullen**. I am aware of that, yes.

Mr. **Neal**. "Closed him out," to use the FBI's words.

Mr. **Mullen**. Again, Mr. Neal, before I answer positively, [37] I will assume that what you are telling me is something you have read, and I will accept that, but I would have to see a document——

Mr. **Neal**. Well, if I am wrong, ask Mr. Ricks.

Mr. **Mullen**. Yes.

Mr. **Neal**. All right. Were you aware that the reason they closed him out as an informant in 1976 or 1977 was that they discovered that while he was working with the FBI, he was also running an advanced fee scam on his own?

Mr. **Mullen**. Yes, I am.

Mr. **Neal**. Nevertheless, he was nevertheless selected as the cooperating individual for Abscam?

Mr. **Mullen**. That is correct.

Mr. **Neal**. And in order to get him to be the cooperating individual for Abscam, you got the court to set aside or grant probation of a 3-year prison sentence by the court in Pittsburgh?

Mr. **Mullen**. I am not certain, Mr. Neal, whether we had the court set aside a conviction or a sentence. I do know that he was given 3 year's probation, and I do know he communicated with the probation officer. Whether he communicated with the court, I am not certain.

Mr. **Neal**. Isn't there a document in the files of the Department of Justice where Special Agent Good and another agent wrote the court in Pittsburgh in regard to Weinberg and [38] that thereafter, the court granted him probation of the 3-year sentence?

Mr. **Mullen**. I am only aware of a communication with the probation officer. It could well be there was a letter to the court.

Mr. **Neal**. My question, I guess, after all of that is, is this the kind of a person that you would nevertheless select as a cooperating individual, and if so, why? Now, here is a man who has had 25 years as a cheat, a liar. Here is a man who you had had as an informant, and here is a man you could not control, or could not control to the point where, unknown to the FBI, he was running an advanced fee scam while he was working with the FBI.

Mr. **Mullen**. Having the prior knowledge of his activities and the fact that he did run a scam when acting as a source in the past, we could take much greater care in dealing with a Melvin Weinberg. You need a Melvin Weinberg to start one of these operations. You need the instant credibility. This is true not only in public corruption type investigations, but in other areas—in narcotics investigations, and we do it all of the time. We try to control them as best we can, while they are going in, that we are not dealing with Boy Scouts.

But there is no way that we could develop, in some cases, an undercover operation without somebody such as Mel Weinberg. [39] For example, to establish such a reputation for an agent, some say would take years. I would say it would be impossible, because that agent would have to commit crimes and be involved in criminal activity to establish a reputation. Now, it is a difficult issue, but it is something we must do if we are going to succeed. I prefer that wherever possible, we attempt to work the source out of the scenario at an early stage. It is not always possible to do that. But to answer your question, Mr. Neal, yes, he is the type of individual that on occasion we must deal with and must put into an operation, but at the same time, I recognize we have a responsibility to control that individual as best we can.

Mr. NEAL. Would you suspect that this kind of a person might be difficult to control?

Mr. MULLEN. I would suspect that this type of person would be difficult to control.

Mr. NEAL. Would this type of information—that is, his history and the fact that he had done this thing while he was working with you—would that be the kind of information that would come to FBI headquarters?

Mr. MULLEN. His past history?

Mr. NEAL. Yes, sir.

Mr. MULLEN. Yes. It would very likely come to FBI Headquarters. When an informant is approved for usage by a field office, headquarters then does maintain a file on that [40] individual, and would be aware of it.

Mr. NEAL. While I am on—all right. What you are saying is, you have got to go with what you have got. And if they are going to get you into crime, you may have to use criminals.

Mr. MULLEN. In many cases, to achieve the greater goal in other areas—not just public corruption—it is essential. In some areas, we just cannot move forward. We run into a stone wall.

Mr. NEAL. You do recognize that that is a considerable risk when you use a man like that?

Mr. MULLEN. We do recognize that.

Mr. NEAL. Now, while we are on Weinberg, Weinberg was compensated.

Mr. MULLEN. Yes, he was.

Mr. NEAL. And the records I have seen relect that not only—now, you can accept this or not—not only did the FBI get Weinberg probation, but over a period of Abscam, roughly from April or May 1978, until October 1981—whatever that is—4 or 4½ years——

Mr. MULLEN. Could you repeat the dates, again?

Senator HUDDLESTON. Try three.

Mr. NEAL. People from Tennessee cannot count that far. [Laughter.]

Whatever that is, 4 or 4½ years, he was—in addition to getting him probation, he was [41] fairly well-compensated, was he not?

Mr. **Mullen**. He was. The records I have, Mr. Neal—just a little difference in the dates—indicated to me that from 1969, the period for which he was first utilized as a source, he was paid just over a total of $252,000. This includes services, expenses, bonuses for specific achievements, and the majority of that would be in connection with Abscam.

Mr. **Neal**. Well, practically all of it—as a matter of fact, he must not have been paid much back in 1968 or 1969, and maybe that is the reason he turned to his own devices—the information I have on the court case—and here is the statement.

Question: "Our figures—now, the total received there would be $298,795, during that period of time from 7-31-78 to 9-31-81."

And the question is, "Would you accept the figure?"

Then, the lawyer for the Government says, "I did, I did."

Now, in order to be perfectly fair, of that $298,000, approximately $50,000 was from a book or from an award for an insurance company, for which the Government is not responsible. So, that comes to about $250,000, as you said. But according to the——

Mr. **Mullen**. I am sorry, Mr. Neal, if you would go back—a book for which the Government was not responsible, that we were somehow involved?

[42] Mr. **Neal**. No, no, no.

Mr. **Mullen**. You are saying in addition to that which we paid him, he had other compensation?

Mr. **Neal**. No, no. The figure I have, the compensation he received as a result of Abscam, $298,795 from July 1978 through September 1981. What I am saying to you is the lawyer included approximately $50,000 that did not come from the Government, so you have got approximately $250,000 paid Mr. Weinberg for that period of time from 1978 through September of 1981.

Mr. **Mullen**. OK. We are separating out, though, that which he gained privately and that which he gained from the Government?

Mr. **Neal**. Yes. If you separate out the approximately $50,000, you would come up with approximately $250,000, or $248,000.

Mr. **Mullen**. OK.

Mr. **Neal**. All right? Does that sound about right to you?

Mr. **Mullen**. The figures I have, as I indicated, through March 31, of this year—and this was prepared by the FBI Audit Unit—the exact figure was $252,735, which does not include the $50,000 you are mentioning that did not come from the Government.

Mr. **Neal**. But for all intents and purposes, all of that came as a result of his activities—came from the Government as [43] a result of his activities in Abscam?

Mr. **Mullen**. The vast majority did, yes.

Mr. **Neal**. All right. What is the discussion about how you pay these people? It seems to me—would that not be enough to cause a man like Weinberg to want to do whatever is necessary to keep this undercover operation going?

Mr. **Mullen**. It may or it may not. At periods in his lifetime, Weinberg earned much more, legally and illegally, I assume, but that in itself was not enough. This particular issue was also gone into very thoroughly by the courts, and it was found that—the payment was not for bounty hunting or anything like that—and it was pointed out that the man probably will be unable to earn a living in the future, either through legal or illegal means, and that his very life now is in jeopardy, so——

Mr. NEAL. Well, he has never earned any money legally, has he—I mean, other than this?

Mr. MULLEN. I do not know the answer to that. I know he has earned a lot illegally.

Mr. NEAL. In any event, the far-more-intelligent-than-I-am Senator advises me that from May 1978 to September 1981 is 3½ years. That is roughly $70,000 a year that a confidential informant is earning as a result of his activities.

Mr. MULLEN. You have to realize he was responsible for [44] some very significant activity, property crime being recovered, corrupt situations being exposed; he traveled extensively, and this cost money, and these things add up. So a lot of it was for compensation for services, but a lot of it, too, was for expenses.

Mr. NEAL. I guess our question is, are those deliberate decisions made with recognition of the possibility that you might be paying a man so much for these activities that he might go out and see that crimes are committed or that phony CD's are recovered, in order to keep this thing going?

Mr. MULLEN. Of course, we have to consider that possibility. And as an example, I believe in most cases when there was a recommendation for a lump sum payment, it was usually reduced by Headquarters, and in order to preclude the possibility that it would turn into a situation where he had to go out and do thus and so in order to get a bonus, we went to a standard payment each month. We were paying him $1,000 and found that we were always having to pay more for expenses or more for a bonus, so we went to a standard $3,000 a month to preclude just the thing you are talking about. At one point, the field operatives came in and asked that this be increased to $5,000 a month. Because of particular expenses at that given moment, we approved it for 1 month only, but retained the $3,000 a month figure.

So it does indicate to me, and I hope to you, that there [45] was control.

Mr. NEAL. Isn't it a fact that when they came in and asked to change from three to five, that you indeed approved it from three to five and made it retroactive for 3 months, so that in that case, he got a lump sum $15,000 in a retroactive payment?

Mr. MULLEN. I would have to see a document saying that. I have been advised that it was for a 1-month period only and that Headquarters declined to approve the $5,000.

Mr. NEAL. Let me give you another instance and ask you what you think about this. In one instance, in the case of Commissioner MacDonald—if you need to say anything to make your answer complete or something, please, go ahead.

Mr. MULLEN. OK.

Mr. NEAL. Do you need to clarify anything?

Mr. MULLEN. No.

Mr. NEAL. You say you determined he was not a bounty hunter, but isn't it a fact that when he facilitated the bringing in of Commissioner MacDonald for a bribe, he was rewarded $15,000 for bringing MacDonald in—and isn't that in the file?

Mr. MULLEN. Not specifically for bringing MacDonald in, but when the payoff was successful and the criminal charge developed, he was given a lump sum payment in that case for his efforts in connection with developing the whole crime, the [46] whole scenario.

Mr. NEAL. Do you approve of that, Mr. Mullen, that is, giving a man a reward because he is instrumental in bringing somebody in who arguably—and we will get to it later on, because I think it is arguable about whether MacDonald got a bribe or not—but even if MacDonald got a bribe, do you consider that appropriate to give this cooperating individual a reward for bringing somebody in who then, say, takes a bribe?

Mr. MULLEN. I mentioned earlier, that is why we went to the $3,000 a month payment rather than the reward-type situation. But even in connection with the MacDonald bribe, which I do consider a bribe, that was one consideration. There were other factors considered in giving him that payment.

Mr. NEAL. Let me move on from that, then. We talked about the fact that before Errichetti ever came on the scene, Weinberg, at least—and I invite you to check me if you have any question about it—Weinberg had mentioned politicians, get politicians involved, in September and October 1978. Then, at some point, there was the development of this, what has been called asylum scenario.

Mr. MULLEN. Yes.

Mr. NEAL. You say in your statement that this was developed by undercover agent, Special Agent Amoroso, in a boat trip on July 26, 1979. Now, you say that at page 11 of your [47] statement.

Mr. MULLEN. Uh-huh.

Mr. NEAL. Well, as a matter of fact, this scenario was developed by Weinberg on July 14, 1979, in a conversation with a man named George Katz, was it not?

Mr. MULLEN. I am told by Agent Amoroso that it was not. I have reviewed a portion of this George Katz-Weinberg conversation, and they do talk about the Shah of Iran leaving and having no place to go, and they went into much greater detail as far as the President not supporting the Shah and so forth, and there appear to be allusions to possibly these people coming over here in 10 years. But unless you talk to the individuals who had the conversation—and of course, Mr. Katz is dead, and I do not whether you intend to call Mr. Weinberg—you could assume from that conversation—they are talking about oil running out, that in 10 years, we will no longer have the oil on which to base their wealth, and they want to get into other areas—it is possible that they were talking about the asylum scenario. Only they can tell us that.

Mr. Amoroso says the idea came to him as he was cruising on a yacht, and it was mentioned—Errichetti was there—when they went by a yacht formerly rented by Anastasio Somoza——

Mr. NEAL. I do want to cut you off, but I understand what you said.

[48] Mr. MULLEN. Yes, but I have to finish in order to answer your question. There was a lot of discussion on the problems he had when he came to the United States and was not allowed to stay here. Amoroso said perhaps it was mentioned at earlier times; he cannot say that it was or it was not. But he recalls it as the idea

coming to him at that time and the issue then being raised. I have to accept what Mr. Amoroso says as being the genesis of the asylum scenario.

Mr. **Neal**. OK, but we need to explore that, because you need to know how a direction changes—you understand that—and what the reasonable indication is.

Mr. **Mullen**. I am willing to explore it.

Mr. **Neal**. Now, the asylum scenario was that the sheiks may be thrown out of their country, they may need to come to America and get asylum, and we need Congressmen to help us in that through private immigration bills.

Now, I have accurately stated the asylum scenario, haven't I?

Mr. **Mullen**. Right. Even in the Katz-Weinberg conversation on the tape, it is Katz who first mentions, "You are going to need Congressmen." And then, prior to the trip on the boat where the asylum scenario is being discussed, Errichetti has already mentioned Congressmen Myers. So, yes, it comes up.

Mr. **Neal**. In this July 14 conversation—and again, I **[49]** will have to ask you to check with me; I could read it here for some great length of time—but basically, they talk about the fact that these sheiks may get thrown out, and they are going to need help, and then Katz says: "Well, they will need lots of friends in Congress."

Mr. **Mullen**. Katz says it.

Mr. **Neal**. Yes. But it is Weinberg who raises the possibility or the specter of the sheiks getting thrown out of their country and needing help. Now, my question to you is—the tape is here, and we can go over it for some period of time, but please accept my word now, or if you do not accept my word, accept——

Mr. **Mullen**. Well, one thing I want to be clear. Does he say they will be thrown out, or does he say they will run out of means of income?

Mr. **Neal**. Do you want me to read it all?

Mr. **Mullen**. If you would not mind.

Mr. **Neal** [conferring with counsel]. I am sorry, I am told I cannot read it. Will you accept Judge Bryant's finding, then——

Mr. **Mullen**. No, I do not accept Judge Bryant's finding.

Mr. **Neal** [continuing]. In the *Kelly* due process, Judge Bryant says that it is clear that Weinberg developed the asylum scenario on July 14, 1979?

Mr. **Mullen**. I do not accept that finding.

[50] Mr. **Neal**. You do recognize he made that finding?

Mr. **Mullen**. Again, I have not seen the document, but I will accept what you say, Mr. Neal, and say that he did. I accept Mr. Amoroso's representation, and I concede that these conversations took place prior to this, but I am also told by Mr. Amoroso that during this period, Mr. Good maintained the control over Weinberg, and that during this period, they may not have had any contract. Again, he would even concede that perhaps there were earlier conversations. He does not recall them, and he states with a written record that the idea came to him during this boat trip on the 26th.

Mr. **Neal**. OK. Either as Judge Bryant says, Weinberg developed the asylum scenario, or as Mr. Amoroso says, he developed it some 12 days later, whichever developed——

Mr. **Mullen**. OK. It was developed.

Mr. **Neal** [continuing]. It was, without question, at that point an investigation aimed at Congress generally—no specific Congressman?

Mr. **Mullen**. I do not—the thought was here. That is where the genesis of the idea—but you cannot say it was "aimed at Congress." That is a rather broad brush——

Mr. **Neal**. Was this a deliberate decision? It would appear to me, if you are talking about asylum for the sheik and private immigration bills, you are talking about Congress.

Mr. **Mullen**. Right.

[51] Mr. **Neal**. Now, assuming that to be true, was this a decision made by the FBI—and it may be a decision that is justified or not justified—was this a decision made by the FBI to develop this scenario now, and follow that, or was this again simply rambling by the undercover agents or Weinberg?

Mr. **Mullen**. We have had the representations by Mayor Errichetti, the contact with—Congressman Myers' statements early on. So it is a means of identifying an allegedly corrupt situation and a means of investigating that situation, developing a means of moving forward—in other words, following the lead that developed, not a scenario to target Congress.

Mr. **Neal**. My question is, did the FBI sit back and deliberate the projection of this scenario, or was this a casual thing that simply came out through either Katz or Amoroso? If the FBI deliberately decided on this scenario to see where it would go, then I ask you, where is your reasonable indication of a pattern of criminality?

Mr. **Mullen**. Well, we had the representations, as indicated earlier, from somebody who turned out to be all too accurate, Mayor Errichetti, and then after the initial bribe payoff to Representative Michael Myers, that what Errichetti said was very true——

Mr. **Neal**. Well, now wait a minute. That is sort of after the fact, Myers' statement and the development of the scenario.

[52] Mr. **Mullen**. I know. I am going back. The scenario was a deliberative process. It was proposed by the operatives, by the field, but reviewed, not only by FBI Headquarters, but by the Department of Justice and by strike force attorneys, who agreed there were no legal problems with the scenario. We expect and encourage our agents to be innovative when we identify a problem in a given area, to develop a means of penetrating that and identifying the problem and developing prosecutable cases against those involved. We expect that of our agents.

Mr. **Neal**. So the development of the asylum scenario, either by Weinberg or by Katz—whoever is right about that—I mean, either Weinberg or Amoroso—whoever is right about that——

Mr. **Mullen**. I am not accepting that there is a doubt here. I have to go along with what Mr. Amoroso says, so I would like to say Amoroso.

Mr. **Neal**. But we do not have to go along with that. We can accept Judge Bryant's finding, if we want to, since I cannot read the transcript. But whichever way it is, whichever one of them developed, you are saying to us that that was a deliberate decision to throw that out, made by the FBI?

Mr. MULLEN. Not a deliberate decision, no, just something that, in a way, developed, evolved as a means of penetrating what had been identified through conversations not only with [53] Katz and Errichetti, as a possible corrupt situation.

Mr. NEAL. You see my problem. We have gone through yesterday and today, a very elaborate procedure for finding these safeguards, or finding a reasonable indication of a pattern of criminality in a certain area, and there is a great deal of communication back and forth between Washington and the field before you authorize this after finding of the pattern of criminality, but yet, in this case, you seem to be saying that this was sort of a casual thing that was thrown out in the course of a conversation and followed, without a deliberate decision.

Mr. MULLEN [conferring with Mr. Ricks]. I just cannot say that it was a deliberative process to the point where we were really seeking a way to move forward at an institution—in this case, being the U.S. Congress. It became a deliberate process after the idea surfaced, as a means of penetrating what we believe was a possible corrupt situation. That is about as far as I can go on that, Mr. Neal.

Mr. NEAL. I understand. And what you are saying to us, then, is that sometimes in the course, when an undercover operation gets going, it is so ordered because the undercover agent or other cooperating individual has to be saying something out there to maintain the cover, there is really no way to predict where a thing is going when it is out there in the field. Now, you may be able to prove it——

[54] Mr. MULLEN. You have general parameters, but often, it is difficult to predict, I will say that. A case may go one direction and turn another, and that is one of the problems with undercover agents. They have to be adept and be able to think quickly on their feet and respond to those situations.

Mr. NEAL. I do not mean to be flippant, but if he had said that somebody is selling forgiveness, if it is a Federal offense, that might be the drift it would take. So it is something that is developed out there in the field and only later brought to the FBI Headquarters for approval.

Mr. MULLEN. Mr. Neal, that is partially true. These people came up with all kinds of scenarios: One, to use the Port of Camden as a port to import narcotics into the United States. They were talking about taking over jai alai stadiums. These con men, these corrupt influence peddlers, surface all kinds of ideas, and when they do, if it appears to be of some substance, we have an obligation to pursue them, and often, we have to develop a scenario to do so, something that is realistic and fits in with the real world.

Mr. NEAL. The problem I am having here is that not many people seem to want to take credit for the asylum scenario, and yet it is an important part of determining what actually happens in an undercover operation.

For example, when Weinberg was testifying on July 9, 1980, in the *Jannotti* pretrial hearing, he says actually Criden was [55] the one who gave the asylum scenario to him. That is at page 3.86.

Mr. MULLEN. What was the date on that, again?

Mr. NEAL. July 9, 1980. So here, we have Amoroso telling you that he developed it. I am telling you, Judge Bryant found that it was Weinberg who developed it 12 days earlier in the Weinberg-Katz conversation. And Weinberg is saying that actually, it was Criden who gave it to him. But in any event, I guess we have made the point that——

Mr. MULLEN. It did develop, and as far as nobody accepting responsibility for it, I do not think it is a credit thing so much. Institutionally, the Justice Department and the FBI accepted it, with their eventual approval, as this means of identifying what turned out to be corrupt activities. But it did develop; there is no question about it.

Mr. NEAL. OK. In any event, that got started thereafter, after July, in any event, correct? Now, we are off on the asylum scenario. Let me ask you this. Was there ever any targeting of specific Members of Congress before names were mentioned by corrupt middlemen?

Mr. MULLEN. No.

Mr. NEAL. Was there ever any pulling off of any Congressmen who middlemen said will take a bribe and then went after and later arranged a meeting?

Mr. MULLEN. No.

[56] Mr. NEAL. All right. So, to get that out of the way, there was no—while somebody might say that the development of the asylum scenario was an undercover operation aimed at Congress, somebody might say that, there was no targeting of individual Members of Congress before their names were mentioned by middlemen?

Mr. MULLEN. That is correct. If I make no other point in these hearings, I want to make that one. I am absolutely certain of that.

Mr. NEAL. Let us make another point, since we have reviewed the record. There was no pulling off of any Federal legislator once a corrupt middleman said he take a bribe and once that middleman informed the FBI of a meeting; is that correct?

Mr. MULLEN. That is correct; no pulling off.

Mr. NEAL. The fact of the matter is that a corrupt middleman during the course of the asylum scenario said, "Senator A will take a bribe"—and you can take all 100 of them and put them in this category, or all 435 Congressmen. If a corrupt middleman says Senator A or Congressmen B will take a bribe, and later on, he told the undercover operatives that he had a meeting scheduled, the FBI approved the bribe offer—authorized the bribe offer, subject to proper assurances.

Mr. MULLEN. Many things would have to be considered. Just who is the corrupt middleman? What kind of track record [57] does he have? Has he produced in the past? Does he have the ability to produce what he says? And then, as I pointed out in my opening statement, there were other safeguards. You would have to have some basis for doing so. In other words, you would not have a citizen walk in off the street unknown to the FBI and make this statement, and you would not then offer a bribe without doing some checking. And you have a middleman who is a mayor of a major city, a State senator, who has boasted and in the past has produced individuals for bribes, has accepted a bribe himself, then you have to give some credence to the allegation and move forward to investigate.

Mr. NEAL. So, my question is, though—and I think this can really be answered and is apparent from your document—since there was not targeting of any specific Member of Congress before a name was mentioned, and since you did not pull off of anyone once the corrupt middleman said, "He will take a bribe," and that middleman then arranged the meeting, the fact of the matter is that——

Mr. MULLEN. It could have been anybody; is that what you are saying?

Mr. NEAL. A corrupt middleman—a corrupt middleman, and I will name them all: Criden, Silvestri, Errichetti—we all know the names—if one of these people says that Senator A—and that would have been any Senator—if one of these men said [58] that: "Senator A will take a bribe," and then tells you that: "I have got a meeting with him lined up," the FBI would have authorized the meeting to take place on video.

Mr. MULLEN. Again, I will say yes, but there may be other circumstances that would have to be considered—I do not know what they could be at this point, but it is tough to generalize and say we can bring anybody in at any time. But for the purposes of this discussion and for the safeguards that we had in place, the preconditions that had to be met, the middlemen, the instructions they had received, I will say yes.

Mr. NEAL. All right. And that makes no difference whether you could find anything in any check that would be otherwise inculpatory with respect to that Senator or that Congressman?

Mr. MULLEN. That is correct.

Mr. NEAL. Now, let us go to MacDonald a minute, because you mentioned that. Errichetti said the Commissioner MacDonald would take a bribe and would deliver a casino license; am I correct on that, I am looking at Senate select committee document No. 1.

Mr. MULLEN. That is correct.

Mr. NEAL. And then there is another document, Senate select committee document No. 2, where the offer of a bribe to MacDonald is authorized by the FBI.

Mr. MULLEN. That is correct.

[59] Mr. NEAL. All right. Now, one of the safeguards then and now is that once this man comes into that video room, you make the situation clear and unambiguous.

Mr. MULLEN. That is correct.

Mr. NEAL. All right. Now, when Director Webster authorized the offer of a bribe to Commissioner MacDonald, he wrote on there, "Deliver money only to Commissioner MacDonald," correct?

Mr. MULLEN. Correct.

Mr. NEAL. Have you seen the tape of the so-called MacDonald bribe?

Mr. MULLEN. I have seen most of the tapes, yes, I have seen the tape.

Mr. NEAL. In fact, that money was not—the Director's instruction is well-conceived, I would think, in order to follow the guideline or safeguard, well-conceived instruction to deliver that money only to Commissioner MacDonald, was not followed. In fact, the money was delivered to Angelo Errichetti.

Mr. **Mullen**. Right, in Mr. MacDonald's presence.

Mr. **Neal**. Well, if you have seen the videotape, you really cannot—Commissioner MacDonald is looking out the window.

Mr. **Mullen**. He later acknowledged he saw the money.

Mr. **Neal**. He later acknowledged he saw the money, but [60] we are talking about how they——

Mr. **Mullen**. What we are talking about——

Mr. **Neal**. Mr. Mullen, we are not talking about what happens later on in this hearing. What we are asking here is, to what extent are the guidelines and the safeguards followed, you see.

Mr. **Mullen**. As best they can be. Now, what we do have here is constructive delivery. MacDonald did receive the money. In the teletype that came in, Errichetti indicates, "The mayor has requested that no discussion of the money take place with MacDonald." However, a simple statement to MacDonald to the effect that there would be no problems encountered in our future dealing would be acceptable, and as you view that tape, you can see time after time, the undercover operatives attempting to get the proper statements to be made, and afterward, the prosecutors were satisfied that there was an adequate indication on the part of MacDonald that he was aware he was being bribed, and he was in fact indicted.

Now, what Director Webster—and I do not want to speak for him; I am sure he will have the opportunity to speak for himself on this—what he had in mind was, what we did not want was an intermediary coming in, receiving the money, and the prosecuting attorneys having no way of knowing whether it actually got to the individual who was to be bribed. So, his presence there——

[61] Mr. **Neal**. Well, I do not want to speak for Director Webster, either, but what it seems to me he is saying is please, remember the safeguard to make the situation clear and unambiguous, and deliver the money only to Mr. MacDonald. And most of the members of this committee have seen that tape, and I have to tell you that in my judgment, the tape is somewhat ambiguous.

Mr. **Mullen**. Well, if you have seen the tape and read the transcript, also——

Mr. **Neal**. I have done both, and I have some question about whether this safeguard was followed, and my question is, why not?

Mr. **Mullen**. I believe that it was followed, but you have to keep in mind, Mr. Neal, that when these situations are occurring, they are fast-moving events, there are often changes, and we depend on the experienced agents we have out there to do what has to be done. It is not always going to go perfectly. In fact, we have laid down what I think are excellent safeguards, and it surprised me sometime when people coming in to take a bribe did not say, "Why do we have to go through all of these rules?" It really was not real world, but it was set up to protect innocent individuals and to ensure a prosecutable case later on.

So in this case, you do have a slight deviation, I concede that. But when this is happening, when you are out there on [62] the front line, this is very difficult to control. These are the guidelines, this is what Director Webster wants, and we try to give it 100 percent; sometimes, you only get 90 percent.

Mr. **Neal**. In regard to MacDonald, one of your other positions in your statement was that Weinberg was carefully controlled and was directed to record every material conversation.

Mr. **Mullen**. Uh-huh.

Mr. **Neal**. Are you aware that before the Errichetti bribe—and you remember that on January 20, a bribe was made to Angelo Errichetti, January 20, 1979—in regard to the point now, are you aware that on January 19, the day before the bribe to Errichetti, and on January 20, before the bribe to Errichetti, Weinberg met in each case with Errichetti, and there is no recording and no 302?

Mr. **Mullen**. There were thousands of recordings made during this investigation. There were occasions where no 302 was prepared and perhaps a recording not made. I do not know what the conditions were. It may be that the conditions, the circumstances, did just not permit, for security reasons, a recording to be made. There may have been instances where the equipment failed. I do not know. But this is another area that was studied very closely by the courts and conceded, as I indicated in my statement, or the court found that there was no deliberate attempt to cover up recordings or [63] to misuse recordings in any way. We would like, Mr. Neal, to have 100-percent coverage. It is just not practical.

Mr. **Neal**. Are you aware that on March 30, the day before the bribe, or alleged bribe to Mr. MacDonald was made, that Weinberg met with Errichetti, who was bringing in MacDonald, for 4½ hours, in a meeting set up by the FBI, and there is no recording and no 302?

Mr. **Mullen**. Again, I am not aware of that, but I accept that it did occur, and again, I would have to know the conditions of where the meeting took place, whether there was a means of recording, or whether there was not. I do not know the reason it was not recorded. Again, I would like every single one recorded; it is just not always possible.

Mr. **Neal**. To the point for us, I suppose, is do you know, when the control officer or the FBI agents found out that these were occurring and were not being recorded, what happened?

Mr. **Mullen**. I think it is probably a question that could be best answered by those agents. I do not know at what point. I knew a lot about what was going on, but I did not know every detail, Mr. Neal. So I just do not know at what point they discovered a problem. In fact, I do not know that a real problem was discovered. I know there was some meeting with Senator Williams prior to the actual meeting with undercover operatives, and he was given strict instructions after that never to meet with Congresssmen alone. But as far as the area [64] you are pursuing at this time, I am just not aware of it.

Mr. **Neal**. I do not want to over- or under-emphasize this, but it has been a point brought out how well Weinberg was controlled.

Mr. **Mullen**. Yes.

Mr. **Neal**. And certainly, in view of his past that we have gone over, he should been, although I know you cannot sleep with the man and you cannot control him 100 percent of the time.

Mr. **Mullen**. You cannot.

Mr. **Neal**. But without over- or under-emphasizing, there are a number of what would appear to be, because of the time sequence, conversations between Weinberg and middlemen that are not recorded or 302'd. I have given you some examples. There are a number even in as late as November, between Weinberg and the middleman, Stowe, who was the intermediary with Jenrette—a number of them in there in November 1979 that were not recorded. Now, my question is——

Mr. **Mullen**. He was instructed to record, and again——

Mr. **Neal**. Who follows that up to see that that is being done? Obviously, you do not.

Mr. **Mullen**. Not at my level, no. I expect the agents, the supervisory personnel in the field and at headquarters, to insure that that is being done. And I would hope that in cases where it was not being done, there would be a good reason [65] for not doing so, and I have to assume that that is the case.

But Mr. Neal, I am sure you will concede—you have raised children, and many of us in this room have—there is no way, even in that situation, to control what a person does 24 hours a day. What I am saying is that given the circumstances of this case, and comparing it with other cases handled by the FBI, the control of Weinberg was extensive and relatively effective.

Mr. **Neal**. It has been testified hereto that the policy of the FBI is, if you cannot record in these circumstances, you then make a 302—that is, the undercover agent or Good goes to Weinberg and then debriefs him and makes a 302, a memorandum, of that conversation.

Mr. **Mullen**. That is correct.

Mr. **Neal**. That is an internal policy.

Mr. **Mullen**. That is correct. Any discussion or evidence developed that may become testimony should be recorded on an FD 302.

Mr. **Neal**. And, for example, a conversation of 4½ hours between Weinberg and Errichetti the day before the alleged bribe offer to MacDonald that Errichetti is bringing in, would seem to be a material converation.

Mr. **Mullen**. That is correct.

Mr. **Neal**. Let me go ahead here, now. Another safeguard mentioned by Mr. Heymann is the thought that a middleman will [66] not bring in an ultimate target who is innocent or who will not take a bribe, because it is not in his interest to do so. I think that is a part of your statement, too.

Mr. **Mullen**. It is a part of my statement.

Mr. **Neal**. All right. On June 22, 1979—I am looking now at our document No. 6, I believe—if you would look at 6 and 7 just a moment, there is request by the field office to offer a bribe to politician C.

Mr. **Mullen**. OK.

Mr. **Neal**. All right. And that document states that, in substance, Errichetti represented that politician C would accept the payoff of $50,000 for misuse of his office. Is that a fair statement?

Mr. **Mullen**. Correct.

Mr. **Neal**. OK, and he represents that that man will do that, right?

Mr. **Mullen**. He does.

Mr. NEAL. Based on that, the authorization to offer this bribe is approved.

Mr. MULLEN. That is correct.

Mr. NEAL. And when it happens, then, it turns out that that middleman, Errichetti—now, this is in June 1979—this middleman, Errichetti, has not told the truth to you.

Mr. MULLEN. I do not agree with that observation.

Mr. NEAL. You do not agree with that?

[67] Mr. MULLEN. No.

Mr. NEAL. Do you not know that when the meeting was held, that Errichetti then said that he had not briefed this public official C ahead of time?

Mr. MULLEN. Yes. And when that occurred, we then terminated the meeting and rescheduled another meeting until he was properly briefed.

Mr. NEAL. Well, I am not sure about that latter part, but my point is, Errichetti had assured you——

Mr. MULLEN. That is right.

Mr. NEAL [continuing]. Given you ironbound assurances that this Politician C would come in and would accept the bribe for misuse of his office.

Mr. MULLEN. There is——

Mr. NEAL. Wait a minute, let me finish. When the man came in, it was obvious that he did not know what was going on.

Mr. MULLEN. That happened on occasion. There is no such thing as an ironbound guarantee from a corrupt influence peddler, and in fact, on one occasion, the good mayor attempted to run a ringer on us——

Mr. NEAL. I will get to that ringer, but just bear with me for a minute, so we can move on.

Mr. MULLEN. Yes.

Mr. NEAL. In this instance, you knew that Errichetti [68] had misled you about Politician C in this instance.

Mr. MULLEN. In this instance, yes.

Mr. NEAL. All right. Now, my question is, knowing that as early as July 1979, you nevertheless continued to rely on Errichetti thereafter?

Mr. MULLEN. That is right. You had to put things in perspective. He did not always not brief those who came in. There were many successful payoffs where Errichetti was involved as a middleman. Now, I would have to know the sequence to know if some occurred before or after this particular situation, but when you look at the overall picture, Errichetti usually produced.

Mr. NEAL. Since you are relying on a safeguard that this middleman has a self-interest not to bring you in somebody without being briefed——

Mr. MULLEN. It is not the only safeguard.

Mr. NEAL. Oh, no, not the only one. I am trying to deal with them one by one. Since you rely on this middleman's self-interest to bring you in only those who will take a bribe, and he misleads you, as he did with respect to this public official as early as July, what do you do to that middleman to reinsert this safeguard?

Mr. MULLEN. Well, one thing you do not do is say, "I'm with the FBI. Do not do it again." We just do not make the payoff. And I am not considering that a safeguard. We are [69] calling that a consideration in dealing with the corrupt middleman and the individuals that he produces.

Mr. NEAL. Is that it, then, I mean, you do not do any more than that? Couldn't you say to this middleman, "Look, we will terminate dealing with you because my people get very mad if you do something like that, and they are tough people?"

Mr. MULLEN. Well, I did not say that, but it may well be that the supervisory agents closer to the scene may well have said that.

Mr. NEAL. All right. Let me ask you to go, then—I am not going to take each and every one of these——

Mr. MULLEN. I believe we are misinterpreting this situation. I think it is clear, whether he had been briefed or not—is it C that we are using—that C knew why he was there and made many representations in that meeting and in other meetings.

Mr. NEAL. Well, you will recognize that a document in the files of the Department of Justice says that at the meeting, Errichetti admitted he had not briefed this public official.

Mr. MULLEN. Yes.

Mr. NEAL. All right—although he had told you in advance that this public official would come in and, for $50,000, would, boom——

Mr. MULLEN. I have not claimed at any time, nor has anybody else, that these people have told the truth on every [70] occasion.

Mr. NEAL. All right. Let me take another one here, our Nos. 11 and 12. Are you with me?

Mr. MULLEN. I am with you.

Mr. NEAL. On a certain date in Document SSC No. 11, there is a representation made with respect to a Senator, Senator A, and Congressman B; is that correct?

Mr. MULLEN. Yes, that is correct.

Mr. NEAL. And based on that representation, authority was granted to offer a bribe to Senator A, and would have been offered to Congressman B, except for certain things, right?

Mr. MULLEN. Correct.

Mr. NEAL. All right. What did you know—now, these bribe offers never took place, right—what did you know, what did you do, to determine the reliability of the information in that instance?

Mr. MULLEN. The same conditions applied. The corrupt influence peddler was given the same instructions, to make sure the individual knew why he was coming, that the middleman knew he was a corrupt individual, that he would make representations, that he would acknowledge why he was at the meeting, and would accept the money—relying on that. In this particular case, there was some indiciation, known to many, that Senator A may have been involved in this type of activity on other occasions.

[71] Mr. NEAL. So in this particular case, with respect to Senator A, you had, in your judgment, something other than the bald word of the——

Mr. MULLEN. That is correct, but had we not had the "something other than," we would probably still have gone forward had the individual——

Mr. NEAL. Simply on the word of this corrupt middleman?

Mr. MULLEN. Of this corrupt middleman, yes.

Mr. **Neal**. This corrupt middleman. Now, this corrupt middleman happens to be a name that we can discuss; isn't that true?

Mr. **Mullen**. That we can or cannot?

Mr. **Neal**. That we are free to discuss because the middleman's name is--

Mr. **Mullen**. Yes, we can discuss it.

Mr. **Neal**. OK. His name is Errichetti.

Mr. **Mullen**. Right.

Mr. **Neal**. This is the man we had the problem with the public official.

Mr. **Mullen**. That is correct.

Mr. **Neal**. This man also told you that an Immigration and Naturalization Service official, a high Immigration and Naturalization Service official, would take money and misuse his office; correct?

Mr. **Mullen**. That is correct.

[72] Mr. **Neal**. All right. Now, you are relying on Errichetti.

Mr. **Mullen**. We are.

Mr. **Neal**. And you know nothing about this official, do you, other than——

Mr. **Mullen**. We are relying on him to a degree, to a point. Then we expect the system to——

Mr. **Neal**. I understand, but before you authorized the bribe to this high Immigration and Naturalization official, before you authorized that—and you did authorize it, didn't you——

Mr. **Mullen**. I was involved in the authorization process, yes.

Mr. **Neal**. Well, by "you," I mean the institution.

Mr. **Mullen**. Yes.

Mr. **Neal**. All right. You knew nothing about this official other than what Errichetti had told you.

Mr. **Mullen**. It so happens in this case, I knew something about the official through other investigations. But again, if he said he could have produced this official, even not knowing—it makes it easier to make a decision having other information—but probably would have gone forward anyway, keeping in mind, as I indicated earlier, Mr. Neal, it is a balancing situation. Errichetti also brought us Michael Myers.

Mr. **Neal**. All right. Now, after authorizing as to this [73] Immigration official, this bribe offer, they actually turned up with an imposter and tried to fool you.

Mr. **Mullen**. That is correct, and I think again, it points out our safeguards in that when we were first given the name of this alleged high-level official, we obtained photographs and did some checking, and the undercover agents immediately recognized that something was amiss.

Mr. **Neal**. All right. Now, here again, we are talking about Errichetti, the same man we talked about a while ago with the public official C. What do you do about Errichetti when he brings you in this imposter, in terms of this specific safeguard? When the middleman is so corrupt that he tries to bring an imposter in, how can you rely on him to make the judgment about whether a man will take a bribe or not and bring any Congressman or Senator in?

Mr. **Mullen**. We remonstrated with him, but we did not let him know at the time that we suspected. We certainly were very—not me, personally, but the agents on the scene—were very harsh with him afterward, but the cover story we handled with Errichetti, in order to not let him know that we knew, we say, "Hey, you may be being victimized, and this may be an FBI undercover operation being run in on us here," and he acted as though he were very concerned and upset and said he would find out who did this. But we continued to use him after this because he had, and did subsequently, produce others. So [74] you had to balance. Errichetti had produced. Errichetti had accepted a bribe. Errichetti had influence.

Mr. NEAL. I know, but Errichetti has already had a problem with public official C. Now, he brings in a ringer. When do you finally conclude that you will not believe anything a corrupt middleman tells you, and you will not bring a United States Senator, a Congressman, or Citizen Jones in and put him before a video camera based on the representation of that kind of a man? I mean, when do you do that——

Mr. MULLEN. It was really, as I recall, about this point that we did lose some contact with Errichetti and had limited dealings with him after this.

Mr. NEAL. I think about this time, you begin to cool on Errichetti, is that correct?

Mr. MULLEN. And he began to cool on us—because he was not making the money he had hoped to make.

Mr. NEAL. Mr. Chairman?

Senator MATHIAS. We have a rollcall vote on the Senate floor. May I inquire of counsel about how much longer you think your examination will take?

Mr. NEAL. Well, my response to that, Senator, would be just how much longer do you want to it go.

Mr. MULLEN. How about 5 minutes, Mr. Neal? [Laughter.]

Senator MATHIAS. Well, it is now 5 minutes after [75] 12. I do not believe that by coming back for a few minutes and then taking a lunch break, we will accomplish very much. I think at this point, we should recess for lunch, and we will resume at 1:30 p.m.

The committee will stand in recess until 1:30.

[Whereupon, at 12:05 p.m., the committee was recessed, to reconvene at 1:30 p.m. this same day.]

[76] AFTERNOON SESSION

Senator MATHIAS. The committee will come to order.

Mr. Neal?

Mr. NEAL. Thank you, Senator.

Mr. Mullen, let me take what may be a pause where we are and preface this question by advising you that in late September 1979, Abscam was designated "Bureau special." What does that mean?

Mr. MULLEN. Bureau special, Mr. Neal, would be a case wherein the matter under investigation assumes such an importance and is of such a magnitude that it requires more headquarters involvement.

For example, there would be more of a role on the part of headquarters in coordinating the investigation. Whereas a Bureau supervisor may have ancillary duties—he may be supervising 40, 50 major items around the country—he would be removed from all other duties and supervise just this one case.

Other examples of Bureau specials would be the murder of U.S. District Court Judge Wood in San Antonio, Tex., the attempted assassination of President Reagan. In the case of Abscam, it also meant that all tape recordings were to be in two originals, with one retained in a safe place in the field office for use as evidence, the other to be forwarded to headquarters where it would be duplicated and submitted to [77] those who had to have it.

In essence, whereas the Bureau does not have hands—the Bureau being the headquarters—have the hands-on supervisory responsibility, it does have more responsibility in directing the course of the investigation. You have much higher, much more intimate involvement on the part of high-level officials.

Mr. NEAL. Mr. Mullen, according to my information, in addition to the seven Federal legislators prosecuted, and without mentioning any names, the FBI approved, authorized bribe offers to approximately 11 other Federal legislators.

Mr. MULLEN. May I have time to check that? I have a guide here that I would like to consult.

Mr. NEAL. OK.

Mr. MULLEN. I do not know that that is accurate. There were, you say, eight total, or seven total?

Mr. Ricks will count those, Mr. Neal.

Mr. NEAL. I have said 11, and let us pass that on just for a minute, but do not let me forget it and come back to it. I want to take up some of those now, and these 11—since the name has been mentioned yesterday, I will mention it again—one of those I am including in there whose name was mentioned yesterday, and therefore I will mention it, was Senator Thurmond. He is in my 11.

The FBI takes the position that it never authorized as to [78] Senator Thurmond, is that correct?

Mr. MULLEN. That is correct.

Mr. NEAL. All right. So, then, it would be 10, leaving that one out, so if you would check that for me.

Mr. MULLEN. We are checking.

Mr. NEAL. Now, as to those 10—and I am not including in that anything now but Federal legislators. As you know, there were others in respect to whom the FBI authorized the payment of bribes, provided they made the assurances, in addition to those I am talking about.

Mr. MULLEN. That is correct.

Mr. NEAL. You will agree with that?

Mr. MULLEN. Yes.

Mr. NEAL. All right. Let us deal with my 10 now for a minute. In each of those cases, a corrupt middleman told you that they would take a bribe and give assurances?

Mr. MULLEN. That is correct.

Mr. NEAL. And in none of those cases did that—in all of those cases, the FBI, based on that, authorized the bribe, provided the man made assurances?

Mr. MULLEN. That is correct.

Mr. NEAL. All right. In none of those——

Mr. MULLEN. Not only made assurances, but fulfilled all the criteria; that he was known to the corrupt influence peddler to be corrupt; that he knew why he was coming in.

[79] Mr. NEAL. Well, to be precise now, that the middleman told you he was corrupt?

Mr. MULLEN. Right. Well. I think we are being——

Mr. NEAL. We are relying now——

Mr. MULLEN. I think we are being precise. He would have told us that, but he was told by us to make sure that this was the case.

Mr. NEAL. Right. And they told you as to those 10 Federal legislators and those other people that they were corrupt and that they would take the bribes and they would make the assurances?

Mr. MULLEN. That is correct.

Mr. NEAL. Based on that, you authorized the bribe, subject to those assurances?

Mr. MULLEN. That is correct.

Mr. NEAL. All right. In none of those cases was a bribe accepted?

Mr. MULLEN. Correct.

Mr. NEAL. Now, then, let us take one or two of those, or a few of those, and see what happened. Look at the document we have designated 269.

Mr. MULLEN. I have the number.

Mr. NEAL. I am sorry; the document we have designated Senate select committee 13, and at the same time Senate Select Committee 14.

[80] Mr. MULLEN. I have those.

Mr. NEAL. Here is a middleman who is saying that Congressman B will take a bribe and give assurances, and here is, based on that, the FBI approving, authorizing the offer of a bribe to Congressman B.

Mr. MULLEN. That is correct.

Mr. NEAL. What did the FBI know, according to your information, about Congressman B other than what this middleman said?

Mr. MULLEN. With regard to Congressman B, in this case it had no other information other than we would have conducted—and I have been advised that we did conduct indices checks when these names came in—an indices check, which apparently would, in this case, have shown no prior record.

Mr. NEAL. But nevertheless—and, you know, I understand that you have certain alternatives at that point. You can either say no or you can say yes.

Mr. MULLEN. That is correct.

Mr. NEAL. And it certainly may be true that the FBI may be subject to criticism either way, is that correct?

Mr. MULLEN. That is correct.

Mr. NEAL. All right. But for the benefit of the committee and for their wisdom, the fact of the matter is that this Congressman—you were authorizing the field to bring this man in, put him on videotape, on nothing more than the word of [81] a corrupt middleman——

Mr. MULLEN. Yes, sir.

Mr. NEAL [continuing]. As to Congressman B?

Mr. MULLEN. In answering—the answer is yes. I must elaborate. As you know, with Congressman B, there is another name contained in these same documents, and the other Congressman did accept a bribe. And we do have the conditions set down, the parameters; this is what must occur for a bribe to take palce, to go forward.

And if we at any point deviate from those—if we decide in this case we are going to do it differently, then you are getting into selection. Then the question you have to answer later on is why did not Congressman B appear, when in these six other cases A, B, C, D, E, and F appear.

So, once we had set the parameters with the involvement of the highest levels of the Justice Department and of the FBI, we had to be consistent down the line.

Mr. NEAL. Now, in the same document—I am sorry; I did not mean to cut you off.

In the same document, Senate select committee 13, there is a Senator's name mentioned—let us say Senator A—and that same middleman is saying that this Senator will accept $75,000 for assurances.

Mr. MULLEN. That is correct.

Mr. NEAL. No meeting was ever arranged with that Senator, [82] but that middleman is saying that.

Mr. MULLEN. That is correct.

Mr. NEAL. You know the name I am talking about?

Mr. MULLEN. I do.

Mr. NEAL. Surely, the FBI would have recognized the integrity of this Senator.

Mr. MULLEN. We basically recognized the integrity of all Senators. In this case, the answer would be yes.

Mr. NEAL. But had the middleman followed this up and come back and said: "I have got a meeting arranged with Senator A," you would have said: "Bring him in?"

Mr. MULLEN. It is likely, but I cannot give an affirmative or negative answer because that is kind of a conclusion. I do not know. Likely, the answer would be yes, but this did not occur, as you are aware.

Mr. NEAL. It did not occur because the middleman did not come back and say that, "I have made an arrangement," or "I have arranged a meeting with Senator A."

Mr. MULLEN. For one reason or another, he could not or did not do so; that is right.

Mr. NEAL. And in this instance, we are not talking about Senator Thurmond?

Mr. MULLEN. That is right.

Mr. NEAL. Now, then, again dealing with Senate select committee documents 15 and 16, this same middleman is saying [83] again that Congressman B——

Mr. MULLEN. Excuse me, Mr. Neal. Could I have the document numbers again? I missed that.

Mr. NEAL. Yes, sir; select committee document 15 and select committee document 16.

Mr. MULLEN. OK; I have them.

Mr. NEAL. This same middleman is saying that Congressman B will come in and, for $50,000, will sell his office?

Mr. MULLEN. That is correct.

Mr. NEAL. And in document number 16, the FBI approved the—authorized the payment of a bribe to Congressman B?

Mr. MULLEN. That is correct, Mr. Neal.

Mr. NEAL. Strictly and solely on the word of this corrupt middleman?

Mr. MULLEN. That is correct, but as you see in committee document number 16, contained is a part of the recommendation of the prior payoffs that had been made and the credibility of the corrupt influence peddler. But the answer to your question is yes.

Mr. NEAL. When the covert stage of this investigation ended, you found out that this middleman had never met this Congressman at all when he was saying these things about the Congressman, did you not——

Mr. MULLEN. I——

Mr. NEAL [continuing]. And that he had called around asking people: [84] "Do you know a Congressman that I can contact?"

Mr. MULLEN. I do not know that from personal knowledge, but I accept that it did occur, and I could elaborate a bit, too. When you are saying the FBI approved, you are aware that this includes—the approval process includes also the strike force attorneys or U.S. attorneys and the approval of the Department of Justice. It was not just the FBI.

Mr. NEAL. Yes; well, let me make that clear. The documents say that Mr. Puccio concurred, provided that this Congressman B, when he gets in front of the video camera, makes the necessary commitment.

Mr. MULLEN. That is correct.

Mr. NEAL. But neither you nor Mr. Puccio knew anything about Congressman B other than the fact that this corrupt middleman says that this Congressman will take a bribe?

Mr. MULLEN. In this case, that is correct.

Senator MATHIAS. Mr. Neal, we have another rollcall vote on the Senate floor and we will take a 10-minute recess.

[Whereupon, a brief recess was taken.]

Senator MATHIAS. The committee will come to order.

Mr. Neal?

Mr. NEAL. Mr. Mullen, let me go to documents No. 19 and 20. Would you look at those?

Mr. MULLEN. I have those.

Mr. NEAL. In this document, there are two Congressmen. [85] One is Congressman B, and as to Congressman B, corrupt middleman Joe Silvestri says that Congressman B will take a bribe of $50,000 and provide private legislation. There, Silvestri is the middleman; am I correct?

Mr. MULLEN. You are correct.

Mr. NEAL. The next Congressman—it is public record—is Congressman Murphy, and there Criden is the middleman, and says that Congressman Murphy will take a $50,000 bribe and do the same thing?

Mr. MULLEN. Yes.

Mr. NEAL. Now, the FBI approved on both of those?

Mr. MULLEN. That is correct.

Mr. NEAL. And did they know anything about Congressman B other than what this man, Silvestri, had said he would do?

Mr. MULLEN. In this case, with regard to this particular Congressman, we did not. Regarding the other Congressman, however, we did.

Mr. NEAL. But you authorized the bribe in both cases?

Mr. MULLEN. That is correct. And again, Mr. Neal, I have to reemphasize that once you had a process, you had to be consistent. You could not deviate; otherwise, it would become a selection process.

And if I also may bring up, our count, as we see it, is 7 rather that the figure of 10 or 11 cited earlier, of those wherein we had approved bribes and no bribe was ever [86] made or taken. And, to me, it points up that the system did work; that it was effective. They never came in. The middlemen could not fulfill the statements or commitments they alleged that they could. So, by having our safeguards, it looks to me that the system did work.

Mr. NEAL. Now, your approval document on this—I want you to look at this carefully, your approval document on this, which is Senate select committee number 20. What you do in this case, then, is to say as follows, and this is the approval:

> On 10-19-79, agent advised that Joseph Silvestri will be introducing Abscam operative to one of the following U.S. Congressmen: Congressman B, Congressman C, or Congressman D. It should be noted that the above deviates from the arrangement by Silvestri set previously in that Congressman A was to be the Congressman conducting business with Abscam operatives.
>
> Inasmuch—

And I am quoting—

> Inasmuch as authorization has been granted to extend $50,000 for the purpose of a bribe to Congressman A, the Interstate Transportation Crime Unit recommends that this authorization be extended to include not only Congressman A, but Congressman B or Congressman C, it being noted that only one payment to one Congressman will be made.

Have I read that properly; leaving out the names?

Mr. MULLEN. You have read that properly.

[87] Mr. NEAL. All right. Where in this document is there a representation that Congressman B or C—even a representation by a middleman that Congressman B or C has been briefed, will take a bribe, will sell his office?

Mr. MULLEN. Again, everything that occurs does not end up in writing. I am sure—we are going back now almost 3 years—that when this last-minute change occurred, the questions were asked. Are the same representations to be made? Do the same conditions apply? Does the strike force or U.S. attorney concur?

I am certain those questions were asked. They do not appear in writing here. You also have the same problem, Mr. Neal, of when you have a last-minute change like this—and we had several and they occurred some—in one case we had, I believe, around an hour to deal with it—whereas if you say you can bring in A but not B, the corrupt middlemen become suspicious and say, "Well, something is amiss here. Why do they want A and not B, or B and not A?"

And, again, it is the consistency that we had throughout, and had in this case. It would have been better—now, on hindsight, it would have been better had there been a little more information here and if the document had been filled out a little more than it is. But I can only say it was the fast pace of the operation and the time available.

Mr. **Neal**. Well, is the operation getting a little too [88] fast when—and you will agree with me that there is no reference in this approval document with respect to Congressman B, Congressman C—I have got my A's, B's, and C's wrong. With respect to Congressman A, there is a representation by the corrupt middleman?

Mr. **Mullen**. Yes.

Mr. **Neal**. With respect to Congressman B or C, in this document there is not even any respresentation by any middleman that these Congressmen will take a bribe, in this document. Now, I am correct about that, am I not?

Mr. **Mullen**. You are correct, and I can only repeat my answer.

Mr. **Neal**. You do not have to.

Mr. **Mullen**. Yes.

Mr. **Neal**. First, the document itself does not contain even any representation by a corrupt middleman that these two U.S. Congressmen will accept a bribe and sell their office.

Mr. **Mullen**. These same——

Mr. **Neal**. The document does not contain it?

Mr. **Mullen**. I am virtually certain—and I cannot recall the conversation; this would have been handled orally. I concede it would have been better to have included that in this document. But the same——

Mr. **Neal**. And it is not there?

[89] Mr. **Mullen**. It is not there; I concede that. But the same conditions apply, Mr. Neal; the same conditions apply.

Mr. **Neal**. And the document in respect to Congressmen B and C does not contain any concurrence of the strike force attorney?

Mr. **Mullen**. I have been advised that even when there was a change, we would not have moved forward. They would never have come to me—"they" being the supervisory agents both at the field and headquarters level—had not we had the concurrence of the strike force attorney or U.S. attorney. I believe in this case, we had the concurrence of both.

Mr. **Neal**. Do you recollect this occurrence?

Mr. **Mullen**. No. I——

Mr. **Neal**. Now, we are in mid-October 1979.

Mr. **Mullen**. I said earlier that it is almost 3 years. A lot of things were said and a lot of things were written. I do not personally recollect that at this time. But knowing the manner in which I operated at the time—what I required before approval went forward—I would have asked these questions.

Mr. **Neal**. And your initials are on this document approving, authorizing the offer of a bribe to Congressman A, Congressman B—anyone—Congressman A, B, or C?

Mr. **Mullen**. Those are my initials.

Mr. **Neal**. Pardon me?

[90] Mr. **Mullen**. Those are my initials.

Mr. **Neal**. Are you not—is it not getting a little bit too hectic when you are authorizing an offer of a bribe—bringing a man in before a camera, authorizing a bribe, and the paperwork does not even reflect any basis, much less that of a corrupt middleman?

Mr. **Mullen**. Well, as I indicated——

Mr. **Neal**. Is that not getting a little hasty?

Mr. **Mullen**. I do not believe so. The safeguards were there—the same safeguards that were put in place not only by the FBI but by the Justice Department. And the selection out process had proven to be effective, and a change at this late juncture, in my opinion—and I am again trying to go back to the events as they were occurring at the time—could have disrupted the operation.

Mr. **Neal**. But you will agree, will you not, Mr. Mullen, that one is not being hypertechnical to look askance at this document?

Mr. **Mullen**. Well, not at the document, but not to look askance at our motivation.

Mr. **Neal**. Your answer is that you are satisfied that notwithstanding the lack of documentation, there was oral communication?

Mr. **Mullen**. That is correct, there would be. These memorandums, when they were submitted and taken through the FBI **[91]** chain of command, were in most cases walked through. They were not dropped into an outgoing mail cart and delivered. Supervisory officials usually hand-carried them right to the top of the chain of command.

Mr. **Neal**. Now, the corrupt middleman who was saying that Congressman A would take a bribe and sell his office was Silvestri?

Mr. **Mullen**. Silvestri.

Mr. **Neal**. Who was the corrupt middleman as to Congressmen B and C that you approved?

Mr. **Mullen**. I would have to go back and review the documents. I will have to go back and check our documentation for that.

Mr. **Neal**. In neither one of these cases, by the way, that you approved on—Congressman A, Congressman B, or Congressman C—was there any bribe offer?

Mr. **Mullen**. There was no meeting as far as I can tell from this document.

Mr. **Neal**. No meeting?

Mr. **Mullen**. Yes.

Mr. **Neal**. All right. One more and I will terminate these theories right now.

Mr. **Mullen**. Mr. Neal, I am told that all three were brought in by—the representations were made by Mr. Silvestri.

Mr. **Neal**. Would that be something that would be in a—you **[92]** understand that we have gone through the documents?

Mr. **Mullen**. I understand.

Mr. **Neal**. Is that something that is contained somewhere in a document that we have simply missed, or is that based on the oral understanding you have now?

Mr. **Mullen**. I understand there are transcripts containing this information.

Mr. **Neal**. There would be a transcript somewhere where this man Silvestri——

Mr. **Mullen**. That is right.

Mr. **Neal**. Even though it was not documented in the approval document, this man Silvestri was saying Congressman A will take a bribe and sell his office?

Mr. **Mullen**. That is right.

Mr. NEAL. Congressman B will take a bribe and Congressman C will take a bribe?

Mr. MULLEN. I am advised there are recordings to that effect.

Mr. NEAL. And that was all Silvestri?

Mr. MULLEN. All Silvestri.

Mr. NEAL. Now, let me ask you, on Silvestri—my cocounsel tells me that we have been given the transcripts where Silvestri is allegedly saying that these Congressmen B and C will take a bribe.

Mr. MULLEN. Yes.

[93] Mr. NEAL. And he advises me that he has looked at them and he cannot find them. Now, having gone through some of these transcripts, I recognize that you could be right and that we could be wrong.

Mr. MULLEN. Well, whatever it turns out to be, it is just a misunderstanding and we will certainly recheck and get back to you for the record on that, if we may.

[The following was submitted for the record by the FBI in a letter to the committee dated December 7, 1982: "The tapes and transcripts of the conversations of Mr. Weinberg and Mr. Silvestri on October 5, 1979, and October 17, 1979, reflect that Congressmen B and C were represented as predisposed to receive bribes."]

Mr. NEAL. Now, then, there are about, as I remember, five Federal legislators that this man—assuming that Silvestri is the one who said these three, OK—assuming that to be true, there are about five of these Federal legislators that Silvestri said would sell their offices, take a bribe, and based on his statement, you authorized the offer of a bribe?

Mr. MULLEN. That is correct.

Mr. NEAL. All right. Is it not true—we get back to the question of when do you finally determine that a middleman—you cannot rely on him. Is it not true that in none of these cases was there a follow-through with respect to this middleman, Silvestri?

Mr. MULLEN. In these five, yes. However, State legislator A did accept cash. There was no prosecution. And Mr. Silvestri was the individual who introduced Congressman Thompson to Mr. Criden and then to the undercover operatives.

Mr. NEAL. Yes, but——

Mr. MULLEN. So, there was that credibility. Looking back [94] now, Mr. Neal, Mr. Silvestri's record was not all that good, if you want to call it a record. His representations were not that valid.

Mr. NEAL. For this committee, the point is—and I understand that in addition to the five we have been talking about, Silvestri was credited with this State public official—credited with bringing in the State public official.

Mr. MULLEN. I do not know if we want to say credited, but he was responsible.

Mr. NEAL. All right. But in that case, the situation is such that the Federal Government is not going to prosecute, is that not true?

Mr. MULLEN. That is true.

Mr. NEAL. All right. So, whatever happened there, it was not enough for the Federal Government to prosecute?

Mr. MULLEN. There was some——

Mr. NEAL. So, that is one time he was——

Mr. **Mullen**. There was, I understand, some disagreement on the part of the prosecutors, but the decision had come down on the side of——

Mr. **Neal**. Of not prosecuting?

Mr. **Mullen**. That is right.

Mr. **Neal**. And as to the other man you say he stole his credibility—Thompson—actually, the FBI documents reflect that Criden is the man they were relying on on Thompson?

[95] Mr. **Mullen**. That is right.

Mr. **Neal**. Would you like me to find that and show you?

Mr. **Mullen**. I said that, too.

Mr. **Neal**. OK.

Mr. **Mullen**. I said the same thing.

Mr. **Neal**. All right.

Mr. **Mullen**. But it was Silvestri who introduced Thompson to Criden.

Mr. **Neal**. All right. But it was Criden who brought in Thompson?

Mr. **Mullen**. That is correct.

Mr. **Neal**. All right. So, really, what you have then with respect to Silvestri is he says that six people are corrupt, will take bribes and sell their office. Five of them do not.

Mr. **Mullen**. That is correct.

Mr. **Neal**. And one of them does not in such a way that the Federal Government wants to go forward and prosecute?

Mr. **Mullen**. That is right.

Mr. **Neal**. Now, that brings up the point, when do you say to a middleman, "Look"—I mean, in some way that will not blow your cover—now, I understand that. But if you are going to rely on middlemen to bring in people—and it is invasion of privacy now; it is one of the costs, and I think you would have to recognize it.

[96] Mr. **Mullen**. Yes.

Mr. **Neal**. It is a serious cost, and it may be a justifiable cost because I understand that conducting an undercover operation is a question of weighing the cost against the benefit. But, surely, you would recognize that a cost of an undercover operation is the terrible invasion of privacy of bringing any man before——

Mr. **Mullen**. I certainly do recognize that.

Mr. **Neal** [continuing]. A video camera. With what goes on in the world now, you might as well—if you want to do anything in government, it seems to me you might as well assume that it is going to be on the front pages of some newspaper sooner or later.

Mr. **Mullen**. We are certainly conscious of that, and I know I seem to be repeating myself, but we go back to those original safeguards. Yes, I am sure—I cannot say this from personal knowledge—that Mr. Silvestri time and again was reminded of the requirements.

Joe Silvestri was not sent out by the FBI. In fact, I am sure we all understand that these corrupt influence peddlers are not working at the behest of the FBI. He said at one point, "I did not know you were interested in Congressmen," or "I did not know you were dealing with Congressmen." This was something he picked up, apparently, from Criden.

In one meeting we held where no bribe was made, Silvestri [97] makes the statement to official A that, "You have to say it; I cannot," which told us he did know what was required, but apparently he took it upon himself to bring these individuals in. They were not paid any bribes. Some meetings did not even take place.

Mr. **Neal**. Now, my point is, though, you continued to rely on Silvestri, and even you must recognize in retrospect that that surely is one man you—his track record does not justify any confidence.

Mr. **Mullen**. You have used a key word, Mr. Neal—in retrospect.

Mr. **Neal**. Yes.

Mr. **Mullen**. You know, at the time this was ongoing, a lot of things were happening. Eventually, you do sense this and you weigh all factors as to what disruptions in the operation would be caused. I am not certain over what period of time this occurred. If we have the dates, it would be helpful because if it all occurred in a week—if it happened over 9 months, that is something else again. That is important.

Mr. **Neal**. No. It occurred over—I believe I can say, but maybe I had better check—it seems to me over a month or 6 weeks, but I would have to check that, frankly, to be absolutely sure.

Mr. **Mullen**. In looking back, even that is a long time. At some point, you should start saying: "Hey, what is happening [98] with this fellow," and perhaps eventually we did. I cannot say that we did not.

Mr. **Neal**. Well, even after four of those situations, he then says—well, let me do this more precisely, I guess. You recommended——

Mr. **Mullen**. I recommended?

Mr. **Neal**. I am sorry. It was recommended that, in a subsequent document, when two of these people—two of these Congressmen—would not or could not come in, Mr. Silvestri then suddenly again recommended a change. And this time you authorized on a U.S. Senator and brought him in on the word of Silvestri solely, is that not true?

Mr. **Mullen**. Are we with U.S. Senator A?

Mr. **Neal**. U.S. Senator A. I am looking now at document Senate select committee 23.

Mr. **Mullen**. Twenty-three.

Mr. **Neal**. And look at the addendum.

[99] Mr. **Mullen**. I see the addendum. This is one that occurred in a very short period of time. I think you see in the addendum a note from Director Webster. It was a tough call to make; I concede that. Again I go to the point that Silvestri is on his way, apparently, as it came to me, he is on his way to the undercover location. I weigh as my role in the approval process: suppose we turn him away. Here I believe for the first time we have a person of a different party. And are we going to be questioned later at a hearing such as this that you took individuals from one party and not the other? These things occur to you at the time. So, you let this one go ahead on the conditions that the representations he made, the same conditions apply. It is a very difficult call. Would I make it differently today? I really cannot say.

Mr. **Neal**. You would not be so quick to do it. It was done in a matter of, really, minutes, the change was made.

Mr. **Mullen**. Perhaps a half hour.

Mr. **Neal**. Half an hour?

Mr. **Mullen**. Yes.

Mr. **Neal**. Within a half hour's time, Silvestri calls you and tells you: I can't bring in Congresman A and B, and within a half hour you approve his bringing in Senator A.

Mr. **Mullen**. That is correct.

Mr. **Neal**. The first time Senator A is ever mentioned.

Mr. **Mullen**. That is correct.

[100] Mr. **Neal**. I recognize——

Mr. **Mullen**. You could get that impression now, looking back but——

Mr. **Neal** [continuing]. No undercover operation can be perfect. But looking at all of this now and looking at it in retrospect, I understand, do you get the impression that along toward the end of Abscam maybe you were not being careful enough——

Mr. **Mullen**. No.

Mr. **Neal** [continuing]. Acting too quickly with not enough documentation, not enough conditions?

Mr. **Mullen**. No.

Mr. **Neal**. Or do you think that is a fair observation?

Mr. **Mullen**. I do not think that is a fair observation. We never got to the point where we became lax in the conditions.

Mr. **Neal**. I will drop that. I am told that, when I said 10 Federal legislators that you approved in addition to the 7 prosecuted, you disagree with me and say there were 7.

Mr. **Mullen**. That is correct.

Mr. **Neal**. However, two of those you would have approved had you not received word from the middleman that they could not make the meeting. You were prepared to approve?

Mr. **Mullen**. I think there was more to it than not being able to make the meeting. There were reasons.

[101] Mr. **Neal**. And the other one, where we have—I may be wrong—is a man who was a State official who may have been on his way. Fair enough?

Mr. **Mullen**. That is correct.

Mr. **Neal**. I have just got a couple more questions and I will quit boring everyone.

Did you ever get any indication, remember the nature of Weinberg, remember when he first was an informant for you he was running a scam on his own and you terminated him because of that. Right?

Mr. **Mullen**. By you, you mean he was terminated by the FBI?

Mr. **Neal**. Terminated by the FBI.

Did you ever in the course of Abscam reach any conclusion that maybe he himself, Weinberg, was sharing the bribes, getting these people in, getting them bribes, and then sharing in it himself?

Mr. **Mullen**. During the course of Abscam; no. Afterward, I understand, there were allegations to this effect. But I have never myself been apprised of any evidence indicating that this has occurred.

Mr. NEAL. Were you aware of this? There is an allegation by the nephew of Errichetti that after the $100,000 intended for MacDonald was given to Errichetti, the next day DiLorenzo says that he took Errichetti from Camden, N.J., to an [102] exit on a freeway in Long Island. There Errichetti delivered to Weinberg a briefcase.

Mr. MULLEN. I am aware of the allegation.

Mr. NEAL. Were you aware that the response to that allegation was that it could not be because at 2:30 p.m. on that same day Weinberg was calling from Long Island to Errichetti in Camden and talking to Errichetti at 2:30?

Mr. MULLEN. Yes.

Mr. NEAL. That was the response; was it not?

Mr. MULLEN. I am not certain that——

Mr. NEAL. And here is the tape to prove it.

Mr. MULLEN. I am not certain there was a—that was a response. I know that was a statement made later on. I do not know in what context that response was made.

Mr. NEAL. Was not it made to show that this meeting could not have taken place because Weinberg was on the phone in Long Island talking to Errichetti in Camden at 2:30. So, he could not have been meeting there and getting a briefcase.

Mr. MULLEN. The phone call, as I understand, was never made.

Mr. NEAL. I am going to get to that. Was not that the response, the initial response to the DiLorenzo allegation about the briefcase incident?

Mr. MULLEN. I would like to respond to this, Mr. Neal, but I would be speaking for somebody else. And I am not aware [103] that I can give you that correct answer from my knowledge. I would like to.

Mr. NEAL. We will carry on with that. Is not it also a fact that later on when the FBI looks at this conversation that allegedly took place at 2:30 p.m. on April 1, they find that for the first time and for the only time Weinberg has put a preamble on the conversation: It is now 2:30 p.m., April 1, 1979; I'm talking to Errichetti in Camden, N.J.?

Mr. MULLEN. I am not well acquainted enough with the detail in the tapes to know that that was the only time he put the preamble.

Mr. NEAL. Would you accept Mr. Ricks' word or Mr. Good's word that is the only time in the event of Abscam to his knowledge or Mr. Good's knowledge that there is that kind of a preamble on a tape recorded conversation?

Mr. MULLEN. Mr. Ricks is here, and he is under oath.

Mr. NEAL. How about just doing this? If I am in error, let him speak up and correct me.

Mr. MULLEN. I am not sure he can answer either.

Mr. RICKS. I would have great difficulty answering the question. I have not reviewed all the tapes. Those tapes that I have reviewed, I have not heard any preamble.

Mr. NEAL. Like this one or any preamble.

Mr. RICKS. I have only heard a small number of tapes.

Mr. NEAL. Have you heard others in the Government say [104] that this is the only preamble like this in the whole course?

Mr. RICKS. I have heard that statement made. There is no way I can authenticate it.

Mr. NEAL. All right. You have never seen one with a preamble like this?

Mr. RICKS. No, sir.

Mr. NEAL. Is not it a fact that sometime near the end of all the trials and everything else that the FBI had this tape submitted to a lab test and found out that in fact the machine, the tape machine was stopped after the preamble, that the conversation, in fact, did not take place at 2:30 p.m. but took place at approximately 5 p.m. on April 1?

Mr. MULLEN. That is correct. I understand that the Weinberg explanation is that he was interrupted when making the call and did not get to complete the call until the later time. Now, that is his explanation.

Mr. NEAL. It is also possible that that was done, the preamble, what I think to be the one and only preamble, was done to establish an alibi against the charge that he was meeting with Errichetti and getting a briefcase the day after the alleged MacDonald bribe in a briefcase that had been given to Errichetti.

Mr. MULLEN. All I can say is he denies this, and we have not developed the evidence to support it. In the MacDonald payoff, later conversations with Errichetti that are recorded [105] indicate that MacDonald is very satisfied with the payoff. In addition——

Mr. NEAL. According to Errichetti.

Mr. MULLEN. According to Errichetti.

Mr. NEAL. Well, Errichetti is not going to tell you that he has been sharing bribes with Weinberg. And I am not suggesting he is. This is a peculiar circumstance.

Mr. MULLEN. In addition, in this case $25,000 of the $100,000 was returned to the undercover operative. So, if they should, which again I do not agree with, I could be proven wrong, this is not perfect, but it was not the whole thing because $25,000 came back.

Mr. NEAL. Yes. There are $75,000 out there that Errichetti got in a briefcase on March 31, 1979. Then, according to the allegation, Errichetti came up to Long Island, met with Weinberg, and gave him a briefcase on April 1. And then there is a one-time-only telephone call, which one might argue would establish an alibi for Weinberg. I mean, that is a peculiar circumstance, though, is it not?

Mr. MULLEN. The circumstances are peculiar, but I think we have to look at the whole picture here. And that is who is making this allegation, a nephew of an individual who was one of the main culprits in this whole operation and has every good reason to make things difficult for Weinberg and perhaps also for the FBI and Justice Department. So, I think we have to [106] understand the motives. Only those involved——

Mr. NEAL. I do understand that. But it was Weinberg who put a preamble saying it is 2:30 p.m. Then, if you look at the tape, if you listen to the tape and read the transcript, you would clearly assume that conversation took place at 2:30, would you not?

Mr. MULLEN. I have not listened to the tape, but I will concede that that could be the case.

Mr. NEAL. If I am wrong, Mr. Ricks can tell me that I am wrong about that by listening to the tape. In fact, the conversation was not made until 5 o'clock of that day.

Mr. **Mullen**. I do not think that is at issue. I agree that that did occur.

Mr. **Neal**. You say there is no proof. This may never be resolved——

Mr. **Mullen**. I know.

Mr. **Neal** [continuing]. But you also recognize that there is an affidavit from Marie Weinberg that tends to corroborate the charge of Mr. DiLorenzo.

Mr. **Mullen**. I understand that affidavit has been sealed as part of an internal investigation. I have never seen it nor has Mr. Ricks.

Mr. **Neal**. Well, it is in the Congressional Record of March 3, 1982.

Mr. **Mullen**. I understand that came from an investigative **[**107**]** reporter. I do not know if we were provided a copy. I have not seen it, regardless.

Mr. **Neal**. The fact of the matter is, let me be totally fair, even if it were a fact——

Mr. **Mullen**. If this were the case, Mr. Neal, I want you to know we would like to know it, too. We did take pains to try to find out and did submit the tape to the laboratory. We are the ones who discovered it.

Mr. **Neal**. That is right, you did, to find out that the call was not made, as it appears, at 2:30.

Mr. **Mullen**. If it occurred, I am not trying to defend something like that happening, we would be the first to want to know about it and take any action.

Mr. **Neal**. And the FBI did run the lab report. It did indicate that, contrary to the preamble, the conversation was not at 2:30 but at 5 o'clock.

Mr. **Mullen**. That is right.

Mr. **Neal**. And it is true also that, whenever you run undercover operations, you always run the risk of a con man who is acting as informant not being totally upright and honest?

Mr. **Mullen**. It has not happened often to us, but it has happened, yes.

Mr. **Neal**. If Mr. Weinberg shared in one or more bribes, that does not necessarily excuse those who were not honorable enough to **[**108**]** reject the bribes themselves.

Mr. **Mullen**. That is true.

Senator **Mathias**. Mr. Neal, we are again faced with a rollcall vote in the Senate.

Mr. **Neal**. I only have one or two questions remaining.

Senator **Mathias**. We will suspend for 10 minutes.

[Short recess.]

Senator **Mathias**. The committee will come to order.

Mr. **Neal**. Mr. Mullen, we were going over what I think both of us, as objective people, would admit is a strange circumstance surrounding April 1, 1979. I have put certain things in the record. Would you like to add other things?

Mr. **Mullen**. I would like to correct the record at this time. I understand that the FBI does have a copy of the Marie Weinberg affidavit.

I am also advised that there is a tape recording between Marie Weinberg and a reporter, Indy Badwar, which refutes, the tape recording, refutes the affidavit and is clearly in conflict with the affidavit. I have not heard the tape. I have not seen the affidavit or a transcript of the tape. But I would suggest, Mr. Neal, that the committee obtain a copy and perhaps you review it and make that a part of the record so we would have balance.

[See exhibits 10 and 11, pages 232–48 *infra*.]

I want to be sure that the committee is aware that, should this activity have occurred, we would not condone it in [109] any way. If ever evidence is developed that it occurred, I would hope that there would be prosecution of Mr. Weinberg and that another charge be added to those outstanding against Mr. Errichetti, not that he needs it, I guess.

I also want to say that, with regard to collusion between Mr. Errichetti and Mr. Weinberg, there would have been other opportunities to show evidence of this collusion, it never occurred. I cite specifically when public official A was brought in—and we now believe that this was orchestrated by Mr. Errichetti—and we obtained the photograph, Mr. Weinberg was the individual who recognized that we were not really dealing with public official A but a substitute. So, I think, if there were collusion between the two, Mr. Weinberg would have been a part of that scenario.

The last point I want to make, and I have been advised that Mr. Errichetti's nephew, Mr. DiLorenzo, kept a meticulous diary on duties or missions that he performed for Mr. Errichetti. There was no record in that diary of a meeting having taken place with Mr. Weinberg.

I just put that in for balance, not condoning the activity in any way and would like to see it resolved and handled properly.

Mr. **Neal**. Have you completed your statement on that?

Mr. **Mullen**. Yes.

Mr. **Neal**. Do you understand that, as counsel for the [110] committee, I am not saying that I know what occurred. I am simply bringing out those particular circumstances that are peculiar?

Mr. **Mullen**. Yes.

Mr. **Neal**. I guess I would ask you in closing, the final and fourth safeguard mentioned in conducting an undercover operation is that the inducement, that is, the bribe, be a real life situation. Now, going to the Senator Williams thing, you recognize that the coaching session that everybody knows about——

Mr. **Mullen**. I am aware of the coaching——

Mr. **Neal** [continuing]. Was improper——

Mr. **Mullen** [continuing]. Was improper.

Mr. **Neal** [continuing]. And that Weinberg was reprimanded for that.

Mr. **Mullen**. He was. And Senator Williams testified in court that that coaching session did not influence him in any way.

Mr. **Neal**. After the meetings where it is alleged that Senator Williams took a hidden interest in a titanium venture to secure Government contracts—you know what the case is there—the Government, not satisfied with that, went back then and said to him in another meeting: Now, we will work out a sale at the same time as this loan and, if you will make these guarantees to the purchasers, the profit will be $70 million; and your share will be $12.6 million.

Mr. Mullen, I have [111] wondered. Is that really real-life inducement, $12.6 million?

Mr. MULLEN. It would not be for me.

Mr. NEAL. Let the record show it would not be for me either.

Mr. MULLEN. It is a lot of money, no question about it. But to describe what was occurring here, we have the ownership of the titanium mine, so-called, and these five persons who were involved in the ownership, Senator Williams allegedly having the hidden ownership. The scenario was for the Arab undercover operation, Abul Enterprises, to support the operation with $100 million so they could operate, mine the titanium, and also buy a plant somewhere, I believe, in the Carolinas to process the titanium.

The reason we went to the second scenario was not to increase the inducement for the Senator or any of the parties involved. It was a delaying mechanism. There was no way that even Abdul Enterprises with all of its resources was going to come up with $100 million. We were being pressed by the group: Where is the money, where is the money? So, to delay the procedure we said: We have even a better deal; a second group wants to buy the mine for $170 million, which meant that, after the $100 million and we paid off all the debts, then they would come in and buy it for $170 million. The Senator's share allegedly was to be 18 percent, which came out to be $12.6 million.

[112] There was discussion at that time, Mr. Neal, that they did not think they were getting enough. So, apparently, to them it was an inducement; and it was unreasonable, not because it was too much, but because it was not enough.

Mr. NEAL. Then the other thing is bothering me. And I say bothering me. The courts have rules on whether this is overreaching and outrageous conduct and all that, but we are talking about policy here.

Mr. MULLEN. Yes.

Mr. NEAL. Not only did you coach the man improperly, as you recognize, or attempt to coach him, get him to conceal his interest—and you recognize it was Weinberg who kept suggesting he had to conceal his interest. Not only did you do that, not only did you go back and get this $12.6 million thing and ask him to make guarantees to the new owners, but then again you go back and try to get him to take $40,000 on the asylum scenario. Looking back at it, does it impress you that maybe, you know, I'm a little uneasy about keeping coming back at the man, keeping coming back at the man? Not necessarily that is illegal, but does not impress you as being, gee, maybe you're really going too far? If it's done, it's done.

Mr. MULLEN. Many of the times, Mr. Neal, he would call the meetings. What he should have done at the outset was say: No, who are these people; I'm not going to deal with them. I do not the think we went back too many times. There really should [113] have never been a meeting after meeting one. At that time, a person of that stature, with his knowledge and background, should—in my opinion, I believe the courts found the same way—should have said something is amiss here and thrown them out of the meeting room, or whatever.

So, no, I do not consider it overreaching, as a matter of policy, nor did the courts.

Mr. **Neal**. Now, finally, you recognize that there are costs and there are benefits in undercover operations. Some of those costs are bringing innocent men before a camera.

Mr. **Mullen**. Which we are concerned about. We do not like—it does occur, I must concede.

Mr. **Neal**. Some of those costs may be involved in the Meltzer situation, which, I understand, you cannot address right now.

Mr. **Mullen**. I have been told I cannot.

Mr. **Neal**. And then, of course, on the other side there are benefits. It is a matter of weighing those costs against the benefits.

Mr. **Mullen**. That is right.

Mr. **Neal**. Thank you.

Senator **Mathias**. We will proceed with members' question. I will ask Miss Sewell to notify each member at the conclusion of 10 minutes.

As I have listened to your testimony today, Mr. Mullen, I [114] have been reflecting on the fact that what has occurred is nothing very new. Although the use of undercover operations has grown rapidly, even dramatically, in the last few years in the Department of Justice, in the Federal Bureau of Investigation, the idea of baiting a trap in this way is not a new thing. Over the lunch break, I asked the Library of Congress to look up an old line and try to indentify it: Set a thief to catch a thief. And they tell me that it is an early English proverb that was first collected by John Ray in a book entitled English Proverbs of 1670 and Later: Set a thief to catch a thief.

If the Undercover Activities Review Committee ever designs a seal, I offer you that line as a motto that you could put on that seal.

Mr. **Mullen**. Thank you, Mr. Chairman. I will pass that on to Judge Webster when I return today.

Senator **Mathias**. I would like to go back to this question of where you reach the point where the costs are perceived to be larger than the benefits. Where do you reach a point where your source is judged to be so unreliable that you can no longer depend on that source as a basis for future operations? Now, it is my recollection that, in response to Mr. Neal's questions, you said that at some point Errichetti reached the level of unreliability so that you no longer acted on his information. Is that correct?

[115] Mr. **Mullen**. No, that is not entirely correct, Mr. Chairman. It was not that he reached the point of unreliability. There were a lot of factors that entered into his relationship with the operation.

Senator **Mathias**. But this was about the end of July or early August of 1979. You had had two unhappy experiences with him.

Mr. **Mullen**. We are talking about Errichetti now?

Senator **Mathias**. Yes.

Mr. **Mullen**. I thought it was around October. Mr. Neal says September. But there were other factors, other than the lack of reliability. He had proven himself. He had reliability and on many occasions produced what he said he could produce. But others were into it. For example, I think Mr. Criden was very effective as a corrupt influence peddler. There might have even been a little falling out between Errichetti and Criden. So, there were a lot of factors other than the fact he tried to bring in what turned out to be a false official.

Senator **Mathias**. But I am correctly recalling that, in response to Mr. Neal, you did say that, whatever the date, whether it was August or September, that at some point Errichetti was——

Mr. **Mullen**. September 18.

Senator **Mathias** [continuing]. Was discredited?

[116] Mr. **Mullen**. Discredited on that occasion, that is correct.

Senator **Mathias**. Only for that occasion?

Mr. **Mullen**. No, but——

Senator **Mathias**. Did you continue to use him thereafter?

Mr. **Mullen**. No, that was the last time that we used him. He knew that we knew that he had tried to run in a ringer, so to speak, and his credibility was lessened with regard to the undercover operation.

Senator **Mathias**. That confuses me because, again, we are trying to determine as a matter of policy how long you can use one of these fellows and at what point they become more of a liability than an asset. In a document which, I believe, is committee No. 182, and the date is October 5, 1979, from the director, there is the line: Further payments will be approved only if brought to UCA by Criden, Errichetti. So, apparently, there was some use of Errichetti a month after you had come to the conclusion that he was not going to be used anymore.

Mr. **Mullen**. That document is there; then that is correct, Senator.

Senator **Mathias**. Was he back on the approved list by October 5?

Mr. **Mullen**. Well, there was not really an approved list. We have to——

[117] Senator **Mathias**. Back in active status?

Mr. **Mullen**. It was never in an inactive status.

After that point, after the effort to bring in a phony official, after that point we would certainly watch closely what Mr. Errichetti did and whomever he brought before the undercover operation. We would certainly be careful. That would, if nothing else, arouse your suspicion, and you would deal with him very carefully after that date. But he was never removed or there was never a no contact that he failed once, he's out of it, that type of thinking.

Senator **Mathias**. After the unfortunate or unsuccessful episodes with Errichetti, was there any notation in his file: this man is unreliable, or this man needs special treatment, or this man must be carefully controlled?

Mr. **Mullen**. I do not know if there are notations in the file. I think the facts spoke for themselves. We knew what he tried to do. At that time, Mr. Chairman——

Senator **Mathias**. Let me just spin that out. I do not want to interrupt you, but to finish that thought. If there is nothing in the file, it is all right as long as you are there as the institutional memory or that there is an overlap of personal recollection. But suppose you get transferred. Suppose for some reason there is a change of personnel in the office. If there is no record made of these experiences, how are your successors, how are people who are going to take over [118] from you in the management of these cases going to be guided by experience?

Mr. MULLEN. There is a clear record of the experience. But Errichetti was not an informant of the FBI. There is no separate file, so to speak, containing the activites of Errichetti. There may be a prosecutive report, a summary, or documents of that nature, but not a separate file where we could put a notation in there: This man is proven unreliable on so many occasions and should not be utilized in the future. He was not working for the FBI. He was out there amongst them. And it could well be, even though he is a dishonest man—I think the record clearly states that—it could well be that he could scheme, as he did in this case, and yet at a later date come up with something of substance. It was possible. But we would, again, be very careful as to how we handle it.

Senator MATHIAS. My time is up. But let me just observe that the way you handle it sounds a little bit like our kitchen stove, which Mrs. Mathias tells me is inadequate and antiquated and ought to be replaced. You turn a burner on, and sometimes it stays at simmer and sometimes it goes to boil. You do not have much control over it. Then all you can do is turn it back off again and then start it over. Is that a little bit the way these cases go? Sometimes they get out of control? You turn them off, and then when you need them again you turn them on again?

[119] Mr. MULLEN. I would not say that was exactly the case, but I know from experience, after 20 years in the FBI, we may have somebody on occasion who has proven totally unreliable as an informant and may be discontinued as an informant and instructions be in the file that he is no longer to be utilized and years later that person comes back and solves what may be a very serious crime for us. We do not turn him back on. We accept what he gives at that point. Depending on the circumstances——

Senator MATHIAS. You get the heat without even turning the switch.

Mr. MULLEN. Now, that is a good analogy. I will accept that one.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Mr. Mullen, let me first, at the risk of being redundant, repeat what boiled down yesterday out of the testimony of Mr. Revell and what you have confirmed in answering questions of Mr. Neal. That is that any citizen of the United States, whether he is a Congressman or not, is subject to being brought before hiden television cameras for the purpose of being possibly presented with a bribe opportunity subject to what may occur once he gets into that room. Any citizen under the guidelines under the approval process can be brought into those circumstances.

Mr. MULLEN. I would not say that was altogether true, [120] Senator. That would leave the impression that we are out there in shopping centers and train stations running cameras trying to catch people in illegal activity.

Senator HUDDLESTON. No, I do not want to give that impression.

Mr. MULLEN. In target situations, it is impossible, for example, and to get away from the bribery type of crime, we have had many sting operations where we set up store fronts whereby people come in to sell stolen goods. It is possible that a legitimate citizen would go into one of those locations.

Senator **Huddleston**. Well, let us talk specifically about Abscam because that is what we have dealt with.

Mr. **Mullen**. I do not——

Senator **Huddleston**. Well, give me one example where one would not——

Mr. **Mullen**. I do not know of any innocent citizen that we mentioned walked in to the Abscam——

Senator **Huddleston**. I did not say walk in. I would say he could be brought in.

Mr. **Mullen**. Or was brought in. This was targeted, the operation was directed——

Senator **Huddleston**. I left out one important thing. He could be brought into those circumstances on nothing more than the representation of a corrupt middleman that he is subject to the taking of a bribe.

[121] Mr. **Mullen**. You have to have some illegal activity that seems to be occurring. And in this case we had that indication from the representations of——

Senator **Huddleston**. But not by the specific individual.

Mr. **Mullen**. Not by the specific individuals. Yes; that is correct.

Senator **Huddleston**. The specific individual who might, he is totally removed from that operation as you can possibly be removed from it, except for the fact that some corrupt middleman made a representation that he could bring him in, and he had reason to believe that he woud take a bribe.

Mr. **Mullen**. I agree with the observations to a point, but I still say that it is still a situation not any citizen would have walked into Abscam. Not any citizen would walk into a narcotics type undercover operation. Not any citizen would walk into a sting type operation. They are isolated.

Senator **Huddleston**. But he could.

Mr. **Mullen**. It is not that widespread. We are not out all over the country with TV cameras seeing who we can catch.

Senator **Huddleston**. I understand that, but I think my proposition is correct. It has been so indicated by your testimony and by the testimony yesterday of Mr. Revell. The approval process—yesterday I characterized it as a charade; that is something of an overstatement. But, on the other hand, it is not totally an approval process either about whether or [122] not you are going to proceed to offer a person the opportunity to take a bribe. An approval process, it seems to me, would also imply that there is a rejection rate. There were no rejections to the point of actually getting them in before the cameras. And you have indicated that, even those where the decision was never made, that you probably would have agreed.

Mr. **Mullen**. There were no rejections whereby we said: No, not this one, but OK on that one. There were circumstances where individuals never came to a meeting.

Senator **Huddleston**. That is because they could not get them there.

Mr. **Mullen**. Because they could not get these individuals to make the representations because they were not corrupt.

Senator **Huddleston**. Right. The middleman could not deliver. But, if he could have delivered, no matter under what pretense he may have made to the individual, you would still have gotten him before the cameras.

Mr. MULLEN. This happened on a very few occasions. And I agree with you; we would deplore that. And we deplore it especially when a name comes out later on. It is harmful. We recognize that.

Senator HUDDLESTON. You corrected the situation once they got in there. But the point I am making is that innocent, unknowing person, a Congressman or a plain citizen, on nothing more than the representation of a corrupt middleman can be [123] placed before secret cameras and offered or at least led up to the point where he might be offered a bribe, depending on how he might react once he gets into those circumstances.

Mr. MULLEN. Senator, we make our best effort to avoid that and control it, but it could and does happen.

Senator HUDDLESTON. I am interested, too, in the genesis of this change in directions in Abscam when it moved to the Congress. This is not in any way to try to defend the Congress. It just came about in kind of a strange way compared to the other developments, as I see it. It was not clear to me this morning when Mr. Neal was pursuing this question of whether or not Mr. Weinberg and Mr. Katz originated this idea or whether or not Mr. Amoroso, the FBI agent, did on the cruise. I am assuming that you are correct, that it was first broached by Mr. Amoroso, Agent Amoroso.

Before the cruise started, was there a conscientious decision made by FBI Headquarters to propose this proposition, to throw this net out and see what it might snag?

Mr. MULLEN. Not to my knowledge. I know of no such decision.

Senator HUDDLESTON. So, this, in essence, was just an offhand perhaps even spur of the moment idea of Agent Amoroso while he was cruising in the Atlantic Ocean?

Mr. MULLEN. It may have started that way, but it becomes much more than that as the process developed.

[124] Senator HUDDLESTON. I understand what it becomes. I am thinking about the beginning of it now. So, as far as we know and as far as you know, that is when the idea first occurred.

Now, your guidelines say that, in consideration for a long-term basis of an undercover operation, the No. 1 thing is if it deals with a crime problem area. This morning, in response to a question by Mr. Neal on this same subject, as to why you decided to go toward the Congress, you said because it was an area of a possible corrupt situation. Now, which is the determining factor? Is it a crime problem area or just a possible corrupt situation that dictates whether or not you will launch this kind of undercover operation?

Mr. MULLEN. I believe that both are close to being the same thing.

Senator HUDDLESTON. You would say they were the same. Well, that is not the way I would feel that the wording——

Mr. MULLEN. Worded a little differently but close to the same, a crime situation.

Senator HUDDLESTON. A possible corrupt situation or a crime problem area. They seem to me to be somewhat different. If you were to use what you have written as a criterion, the crime problem area, I am curious as to how you and whoever made the decision felt that the matter of dealing with immigration problems on a paid basis was in fact a crime problem area inasmuch as in the 200-year history of the United States there [125] has only been one prosecution of any Congressman on any charge relating to bribery connected with immigration matters.

Mr. MULLEN. It was not that the immigration matters were the crime problem. The information that was——

Senator HUDDLESTON. Congress itself was the crime problem?

Mr. MULLEN. No; not the Congress. I think I indicated this morning never have we painted with a wide brush on this one, and I would not want to infer that. But there were certain Congressmen who would take bribes. As indicated at one point, Mr. Errichetti provided us with that list. Many of them were State officials, yes, but the list did contain the name of a Congressman. After that meeting did occur, it confirmed what Mr. Errichetti had told us and confirmed that, indeed, there was a problem.

Senator HUDDLESTON. My time is up. I think it is an interesting commentary if it is in fact true that the Federal Bureau of Investigation would rely on a corrupt middleman to determine where there is a crime problem area rather than making that determination themselves. I am not sure, your guidelines do not say if a crime problem area is defined or identified to us by a corrupt middleman. I assume that the Justice Department itself and the FBI would be capable of——

Mr. MULLEN. The corrupt middleman is the beginning. I do not think he makes the decision as to what is a crime [126] problem area. That would have to be determined by law enforcement officials.

Senator HUDDLESTON. This is strange that an area in which there had only been one case, there was a conviction, later overturned by the Supreme Court, in which a Member of Congress was charged with a criminal violation relating to immigration matters in 200 years. It does not seem to me to be an area that you would describe as either a crime problem area——

Mr. MULLEN. I am familiar with——

Senator HUDDLESTON. You were correct. It did turn out to be a possible corrupt situation.

Senator MATHIAS. Senator Rudman?

Senator RUDMAN. Thank you Mr. Chairman. Mr. Mullen, I just want to talk briefly about three documents, one statement and two documents before getting into a particular area of inquiry.

Yesterday I discussed with Mr. Revell the statement of the Attorney General's guidelines on criminal investigations back in December of 1980 in which, among other things, he said that individuals and organizations ought to be free from criminal scrutiny that is undertaken without a valid factual predicate, without a valid law enforcement purpose. From there let me just quote to you the current guidelines. We are looking at this retrospectively and also trying to look at it prospectively to see if we can improve what has gone on in the past.

[127] The authorization for undercover activity guidelines says, among other things, two things, that, in addition to complying with legal requirements: (a) The corrupt nature of the activity is reasonably clear to potential subjects; and, (b) there is a reasonable indication that the undercover operation will reveal illegal activities.

This morning at about 11:05 or so in the course of your testimony—and I believe it was in response to questions from Mr. Neal—you said quite accurately, from my own experience I know it is very accurate, you said: "You find that con men talk in many areas often without any basis."

I just want to take those three things together for a moment and talk about the case of Senator Pressler. It seems to me that, if we can do anything, we might improve the methodology that is used. I do not think that the standards that you apply in a narcotics investigation that require instantaneous reaction on the part of field operatives are quite the same as the kind of guidelines, the kind of decisions you make when you are essentially running a political corruption investigation. I expect you would agree with me on that.

Mr. **Mullen**. Yes.

Senator **Rudman**. The Pressler case indicates that, if something can go that badly wrong, something is wrong with the system. Now, I understand that these specific guidelines were not in effect at the time. I also understand from testimony [128] over the last 2 days that approval under the bribery guidelines, which we do not have a copy of, consists essentially of approval based on certain contingencies taking place. However, I also understand from testimony of Mr. Revell that certain preconditions must also exist.

Let me outline the Pressler case, which has been outlined on the Senate floor but is worth repeating in the course of this hearing. To refresh my own recollection, I discussed with Senator Pressler during the last rollcall vote, we spent about 15 minutes together, to make sure that my recollection and my notes from the floor were correct. Senator Pressler indicated he was going to possibly run for President, had a fundraising even at which a Mrs. Bell, a very respectable and respected lady whose name is in the public record, a wife of a surgeon here in Washington, was a very great supporter of Senator Pressler. They were trying to raise money for a presidential campaign.

The following day, after evidently a news report, she received a call from Mr. Silvestri, your middleman. Mr. Silvestri knew her 20 years ago in Florida. I think they may have gone to college together. He said: "You know, I notice that you're working for Senator Pressler, and I've got a group of businessmen that might like to help him." To make a long story short, Senator Pressler was finally contacted through his office through Mrs. Bell. To make a very long story short, [129] after trying to get them to come to a fundraiser that night at the Capitol Hill Club, he got into Mrs. Bell's car. They drove to a place called Clyde's, evidently a restaurant here, picked up Mr. Silvestri, who got in the car. I do not know how long it takes to get from Clyde's to the location, but it was not very long. They knew each other for all of about 12 minutes, according to Senator Pressler.

When they got to the location, Mrs. Bell was told to stay outside, which she was rather upset, she could not understand why. Silvestri comes in on the set, and a 30-minute meeting takes place.

Now, I submit to you that I will agree that an offer was not made at that point, because the first words out of Silvestri's mouth were: "I don't think the Senator has a complete understanding of why he's here." But for the next 30 minutes, if you look at that tape, there is enough fencing involved there that it indicates to me that the undercover agents were kind of probing around a bit rather than simply terminating that event at that point.

Would you agree with me that the guidelines ought to be tightened up so that kind of thing, that has no valid factual predicate, can happen?

Mr. **MULLEN**. I do not know in which way they could be tightened up. But, having viewed the tape, as soon as that statement was made, if the undercover operative said out, I [130] think it would have led possibly to the collapse of the undercover operation. There is no way you can say we can't talk to you. If you will notice in that same tape, that is the one where the statement is made by Silvestri that I can't say it, you have to. And I am sure that the undercover operatives were well aware that Senator Pressler had no idea then why he was there and what was going on. Half an hour was a relatively short meeting, and he was out; and no bribe was paid in this case.

Senator **RUDMAN**. But there was discussion of possibly raising substantial campaign contributions.

Mr. **MULLEN**. There was.

Senator **RUDMAN**. I think, Mr. Mullen, that starts getting close to a line of maybe going beyond where those operatives should have gone.

Mr. **MULLEN**. That is something we could look at, Senator.

Senator **RUDMAN**. I think you ought to look at it, Mr. Mullen. I have run political corruption investigations undercover as well as narcotics in the 7 years that I served as attorney general of my State. I understand the problems you face. I have no problem with your taking Errichetti's word for the corruption of a number of people. I think maybe at a point you might have pulled back, but that is a tough judgment. Errichetti was a State senator. He was the mayor of a city. You would assume he was in a position to know if people are [131] corrupt. I can understand that. When you start getting into the Silvestris and the Weinbergs and the others, under the contingent approval system that you have, there is a terrific risk that people's civil liberties will be trampled. I can tell you this. Senator Pressler, who is as honorable a person who serves in the U.S. Senate——

Mr. **MULLEN**. Agree.

Senator **RUDMAN**. Senator Pressler will carry this for life. It is almost like someone who has been exposed to radiation. The doctors tell them they are all right, but every day of their life they wonder if something is eating away at them. Hardly a day has gone by since I was named to this committee that Senator Pressler has not at some point during the day on the floor come up and said something to me about: I hope that maybe I can finally be cleared. And I said to him: Larry, you are clear, there is no question; you have a letter, essentially, almost, I would say, of apology from the Director of the FBI. But in his mind he was tainted.

We are talking about prices, Mr. Chairman. We are talking about a pretty heavy price. I would simply suggest to you that dealing with the Silvestris, the Weinbergs of this world, the Errichettis of this world, that under the approval system you have, if these hearings will produce anything, because you need these operations, they will maybe produce some safeguards that would allow that kind of thing in that kind of a situation not [132] to happen. We are not talking about narcotics or gambling. We are talking about the offer of bribes to people whose reputations are everything.

Mr. **Mullen**. I agree, a very difficult and very sensitive area. It is difficult. Bribes are exchanged in many ways. In fact, during the undercover operation one individual before the operation at the undercover location said that he would prefer to have an attorney pick up his payoff because then it would be protected by the attorney-client privilege. And that is the type of thing you are up against.

I heard where one idea is that, once a person says no, then you can no longer deal with him, which would make it certainly easy to go in and say no once and then accept it. So, it is an area that is worthy of study, I will agree. If we could develop a system so that no innocent persons were brought before the operation, no one would like to do that more than the FBI and the Justice Department.

Senator **Rudman**. I think one way to ensure that under your current guidelines under a Pressler-Silvestri scenario was to have made some assurance that Mr. Silvestri had met Senator Pressler more than 12 minutes prior to taking him to a meeting, particularly in light of the handwritten note of the Director, who wrote on this approval: Try to be sure that this new Senator knows he is being paid or given a bribe.

Mr. **Mullen**. That was a precautionary note. I hope you [133] understand what the Director was saying.

Senator **Rudman**. I understand it completely. I take that in precisely the context that Judge Webster made it. That certainly was a proper notation. He was trying to make sure that due process was being complied with. It just seems to me that, to make the approval to bring the Senator in on that kind of notice, when there was no corroboration by you or your people, Mr. Mullen, that they even knew Senator Pressler, I think we are starting to get to the line where constitutional rights mean a bit more than convicting a few people. I generally approve of your operation, but I think this was a problem. My time is up.

Mr. **Mullen**. I think constitutional rights always are more serious and to be considered more than a few convictions. We agree.

Senator **Mathias**. Senator Leahy?

Senator **Leahy**. Thank you, Mr. Chairman. Questions that I was going to ask have been asked by the Chairman and Vice Chairman, so I will not repeat those. But, to follow up on something my good friend from New Hampshire has said, we are all somewhat troubled by the Pressler case, a feeling that, gee, we got the apartment, we're paying the rent on it this afternoon, we ought to get something good out of it, find somebody and bring him over. And that is kind of an impression, right or wrong, that many get. We are all glad that none [134] of us were walking down the steps at that time. I realize from your testimony that it goes into a little bit more than that.

You say you set these up and you cross check and you make sure. You testified earlier that you go and get photographs to make sure you have got the right person and follow through and so on.

Have you ever had cases where you have gone through an investigation for a substantial period of time and find that you were investigating the wrong person, and the person was not who you thought they were? Has the FBI ever make that mistake?

Mr. **Mullen**. Yes, we have.

Senator **Leahy**. How often?

Mr. **Mullen**. Not often, fortunately. In the many undercover operations we have conducted over the past several years, I am not aware of the exact figure—I am sure it would number in the many hundreds—I know of only 30 lawsuits in about 10 of the operations.

Senator **Leahy**. How many times in a public official corruption case have you made a mistake and find you were going after the wrong person, say, in the last couple years?

Mr. **Mullen**. Within the very recent past, we had one case in particular where we thought we were dealing with certain officials and found out we were not. I do not know how many cases, Senator Leahy, but it has occurred.

Senator **Leahy**. Take that particular time. It turned out [135] to be, what, somebody who worked in the building or something of that nature?

Mr. **Mullen**. It turned out to be a law partner of Mr. Criden.

Senator **Leahy**. How many public corruption undercover cases did you have underway at the time when you made a mistake on that one?

Mr. **Mullen**. We did not make a mistake on that one. We discovered the mistake.

Senator **Leahy**. How long did it take you to discover the mistake?

Mr. **Mullen**. Almost immediately when he walked into the room, when he used the name incorrectly.

Senator **Leahy**. Have you ever had a case where—let me back up. Was that the case involving the judge? Have you ever had a case where you thought you were dealing with a judge and it turned out not to be the judge?

Mr **Mullen**. That is the case I was referring to.

Senator **Leahy**. And that took how long before you discovered it?

Mr. **Mullen**. That one took a matter of months.

Senator **Leahy**. So, perhaps the care that you were suggesting to us earlier of taking photographs and so on might not have been followed in that case. Would that be safe to say?

Mr. **Mullen**. That is correct, Senator.

[136] Senator **Leahy**. And that might come as little comfort to somebody whose name is being bandied about in an investigation. Let us say, for example, that that particular person you thought you were investigating were to come up for a Federal appointment during that time. They check and they say: Oh, no, no, this person is involved in taking bribes. But indeed they might not. That could cause some consternation, could it not, especially if they never knew about it?

Mr. **Mullen**. It could. I would hope the record would be clear that there was found to be no wrongdoing. We are getting into a very sensitive area right now. We are talking about an ongoing case actually. In that particular case, Senator Leahy, even though this occurred where individuals identified were in fact other people, I understand there will still be prosecutions of some judges in that case.

Senator **LEAHY**. I understand that. What I am saying is that I just did not want to leave the impression here that these methods of care and double checking and all are either always followed or always foolproof.

Mr. **MULLEN**. I could not agree more. We have never claimed perfection here. We are striving for it. I hope we have made the point at least that we are trying to insure that this is the case. We do use due care with regard to individual rights and to really go after only those who are involved in criminal activity. But there will be mistakes. [137] Hopefully, they will be very rare. I believe they have been.

Senator **LEAHY**. You say there have been 30 lawsuits. During what period of time?

Mr. **MULLEN**. I find it difficult to frame it timewise. Let us say the past year to 18 months. I would like to be able to correct that for the record if I may.

Senator **LEAHY**. If you please. Let us take a 3-year period of time. Find out how many lawsuits there have been during that time. I would assume that is information readily available. It is not going to take a great deal of work to dig out.

Mr. **MULLEN**. Yes.

Senator **LEAHY**. Give us the number that are pending and the number that have been decided and, of those that have been decided, whether they have been decided favorably or unfavorably to the Bureau.

Mr. **MULLEN**. I would be pleased to do that.

Senator **LEAHY**. I would ask, Mr. Chairman, that, once I have gotten that, that information, I may have some more questions along this line for the record. I realize that some of them may be going into ongoing questions. It may be better to do it for the record and determine what can be answered on the open record and what might be on the closed record.

Senator **MATHIAS**. We will submit those on your behalf.

Senator **LEAHY**. Thank you. I have one last question, Mr. [138] Mullen. Have you ever been caught in a countersting? I do not mean you personally but the Bureau.

Mr. **MULLEN**. I have to think about that one.

Yes. Mr. Ricks jogged my memory. I think it has happened on at least two occasions. I recall one specifically in Connecticut; I believe a second, in Texas.

Senator **LEAHY**. The one in Connecticut was a wee bit embarrassing. I think it got on the local news that night, did it not?

Mr. **MULLEN**. Local news? It was on the world news.

I do not like to make light of it. We were not pleased about it.

Senator **LEAHY**. But a local news station fed it, I think it was.

Senator **HUDDLESTON**. If I might interject. There was sort of a countersting connected with Abscam, was there not, in the early phases of it out on the coast. Would that be termed a countersting?

Mr. **MULLEN**. No, we are getting into the—Mr. Neal said, is where I cannot discuss. That was not a countersting.

You could say, Senator Leahy, that the effort to bring in a phony official was a countersting, which was detected. We have had that happen to us, fortunately, only twice that I am aware of.

Senator **Leahy**. What finally happened with that one in [139] Connecticut? Did everybody finally decide to exchange expletives and then just back off into neutral corners or what? I know the attention span sometimes of the press in things like this is short, but that is because they work very hard and can handle only so many things at once. I see them nodding in agreement on that.

Mr. **Mullen**. In Connecticut, in the Bridgeport case, there have been indictments of public officials.

Senator **Leahy**. But not the ones who photograph so well in the parking lot?

Mr. **Mullen**. We are getting into the ongoing investigation area. I would be happy to brief you on that one privately if I may.

Senator **Leahy**. Any charges brought against the FBI agents by the local authorities?

Mr. **Mullen**. There were no charges. And the payoff money was returned.

Senator **Leahy**. I rather suspected it might be. Thank you, Mr. Chairman.

Senator **Mathias**. Senator DeConcini?

Senator **DeConcini**. Thank you, Mr. Chairman. Mr. Mullen, first let me say I think you have conducted yourself very well in being as concise as you can be or as I believe you can be today, at least while I was here.

Under your guidelines that are now in place, I take it, [140] the general criminal investigation guidelines, for terminating it lists—I have them here, page 3, under general principles, the third item says: An investigation should be promptly terminated upon completion of all reasonable and logical investigative steps and, if appropriate, should be presented for a prospective opinion.

Just in reference to the Pressler matter, when was that determination made that should be terminated and no longer that to be an active case?

Mr. **Mullen**. The Abscam case continued. But with regard to Senator Pressler?

Senator **DeConcini**. As to Senator Pressler.

Mr. **Mullen**. From my perspective it terminated when he walked out of the undercover location.

Senator **DeConcini**. Would that be a standard situation? When someone is brought in and refuses a bribe or the offer or even the discussion is nonproductive, would that normally terminate it?

Mr. **Mullen**. Not in all cases, Senator, because there may be different factors. Representations may be made by an individual that could go either way.

Senator **DeConcini**. Depending on the circumstances right there.

Let us assume, as the case was with Senator Pressler, as far as you were concerned it was terminated then as to that [141] individual.

Mr. **Mullen**. Yes.

Senator **DeConcini**. OK. Now, is there a reason other than the fact that you have the whole Abscam investigation going on that something is not in your guidelines here—or perhaps it is—where that person would be notified or advised and something put into his file or something to protect that individual when in fact it was a mistaken identity, like you said you have had on rare occasions, or in this case where the person was brought in and nothing clicked and nothing happened?

Mr. MULLEN. I do not believe it is in the guidelines. It is something, again, we could consider, weighing the value of doing this and then having possible publicity later on. But it is an area that we could look at.

Senator DECONCINI. I can understand perhaps if you made a public announcement or put out a list during the course of the whole investigation. After it is all over, it seems to me that those that did not become implicated would certainly deserve some automatic gesture of communication from the Justice Department and from the Bureau. Would you consider that as part of a guideline in the future?

Mr. MULLEN. I have to say I will mention it to other officials, but——

Senator DECONCINI. Does that trouble you as——

[142] Mr. MULLEN. Immediately concerns do come that these letters would then be flashed around. Perhaps somebody then could commit a crime and say: there's my FBI clearance. It then does give the appearance that we are testing and people are passing the FBI test, and here is your letter to prove it. I can see some dangers. Again, I do not want to dismiss it out of hand. Maybe we could discuss it.

Senator DECONCINI. But do you not think that it is most unfair for someone to find out that they had been a target even though they had not culminated the transaction through the public press in the course of the investigation?

Mr. MULLEN. I think that is most unfair, extremely unfair, to have that identified in the press. Senator DeConcini, that happened through leaks, which we all deplored.

Senator DECONCINI. I understand. I only suggest that the Bureau ought to consider that. I think that, once someone performs properly in the sense that they are not part of it, and in fact in Pressler's case I could not see why he was even brought in, from my knowledge of the case, but in fact he was. And he did not participate. It seems to me like he ought to have been exonerated by the Bureau and, if not during the course of the entire investigation, immediately thereafter. The Senator here had to go through all kinds of didos to attempt to do something about it.

I have another question.

[143] Mr. MULLEN. I would like to give this one some thought, and I will pass your thoughts on to Judge Webster.

Senator DECONCINI. Thank you.

In the course of your using informants, take someone like Errichetti or—let us take Weinberg on that particular case. Now, he had been an informant—is this not correct?—prior to the Abscam investigation or actually prior to the art sting operation, and he had been terminated. Is that correct?

Mr. MULLEN. That is correct.

Senator **DeConcini**. When he was in good standing from the standpoint of being a reliable informant, can you disclose to us how many cases he was involved in?

Mr. **Mullen**. Yes. I have a list. Do you mean all the way back to 1969?

Senator **DeConcini**. Yes. I would just like to know roughly how many cases he was involved in where he was a reliable informant prior to the sting operation set up that resulted in the Abscam.

Mr. **Mullen**. Can I get that for the record? I do not have it with me.

[The following was submitted for the record from the FBI in a letter to the committee dated November 4, 1982. "Prior to Abscam, Mr. Melvin Weinberg assisted the FBI by providing information on 66 separate investigative matters. Three convictions resulted from these cases."]

Senator **DeConcini**. Yes. Is it numerous, do you know?

Mr. **Mullen**. I believe very numerous. That is my thought at this time.

Senator **DeConcini**. Do you also believe that there were numerous convictions as a result of his being an informant **[144]** during that period of time?

Mr. **Mullen**. I hesitate to say numerous. I do sense that there were many, but I would like to get that for the record, which I will try to do right away.

Senator **DeConcini**. My point is, notwithstanding the background of this individual, indeed is it fair to say that he had a proven record of being a reliable informant that helped the FBI make valid cases?

Mr. **Mullen**. Yes. You could make that statement.

Senator **DeConcini**. So, when you brought him into the sting operation, you were attempting to rehabilitate him as to become a reliable informant again?

Mr. **Mullen**. I do not think it was a rehabilitation process. We were attempting to utilize what he had to offer.

Senator **DeConcini**. If you had terminated him because he was unreliable and now you were bringing him back on board, so to speak——

Senator **Mathias**. That is where the juice came back into the burner again.

Mr. **Mullen**. This is right. It is a difficult area, Senator DeConcini, because the informant gives us the best of what we have and perhaps the worst of what we have sometimes. Difficult yet essential, just a difficult area for us.

Senator **Mathias**. Do you have further questions in this round?

[145] Senator **DeConcini**. No, I do not.

Senator **Mathias**. Then we will start a new round in 10 minutes.

[Recess taken.]

Senator **Mathias**. The committee will come to order.

I was interested, Mr. Mullen, in the exchange between Mr. Neal and yourself with respect to the analysis of the Weinberg case. Was that an unusual procedure to subject these particular tapes to these tests? Or are such tests routinely run on tapes?

Mr. **Mullen**. I believe, Mr. Chairman, it came up upon a review of all of the tapes. But, if I may, I would like to make inquiry.

No, it is not routine procedure. I am told we tested that particular tape after the allegation was made.

Senator MATHIAS. Do you have any policy or practice or guideline with respect to special analysis of tapes?

Mr. MULLEN. Do you mean all tapes?

Senator MATHIAS. Yes. Do you spot check tapes?

Mr. MULLEN. We do not.

Senator MATHIAS. Or only if some question is raised, as in this case?

Mr. MULLEN. If some question arises.

Senator MATHIAS. On page 12 of your statement, you refer to a conversation that took place in October 1978 in which [146] you had a recorded telephone conversation—by you I am referring broadly to the bureau—between Mel Weinberg and John Stowe. Stowe advised that he knew a Congressman who was as big a crook as he was. Now, apparently, at least there is nothing in your statement to indicate that anything was done in that matter until 13 months went by, and you say then in November, recalling Stowe's representation he was recontacted. Again, I just try to get a sense of what motivates the bureau in one of these actions. Why did Errichetti set you off and Stowe did not light your fire?

Mr. MULLEN. That one is difficult for me to answer.

Senator MATHIAS. It is difficult for me to understand, too.

Mr. MULLEN. That was kind of a separate investigation, I believe that was one known as Goldcon, being handled out of Miami. I can only assume, in looking at it at this point, that we followed the promising leads. Often this will occur in an investigation, where you will go back and pick up loose ends. But I do not have any further explanation as to why we did not pursue that right then unless it was the activity that Stowe was involved in. Perhaps they felt the case was developing and in time they would identify this individual, and it just was not necessary to pursue it at the time.

Senator MATHIAS. I take very seriously the statement you made about the obligations of the FBI to pursue any evidence of [147] corruption. I think it would be helpful to the committee if we had some sense of why that obligation weighed more heavily on Errichetti's word than it did on Stowe's word.

Mr. MULLEN. Not being familiar or involved at that level, I am trying to come up with a reason why it could have occurred. It would be simply that. It would not be the definitive explanation. I think we would have to talk to the agents involved. Perhaps to have pursued that individual could have been disruptive to the investigation.

Senator MATHIAS. Can you enlighten us as to the recontacting of Stowe? How did that come about? How do you dredge up a conversation of that sort, which is 13 months old? Does somebody just remember it? Or do you have a computer that flips up Congressmen? How does it come to mind?

Mr. MULLEN. In some cases we could have a computer. I do not believe we did in this case. I believe this one probably came to mind upon reviewing the investigation near the end or at some point, that here we have this other allegation, here is the scenario, the opportunity to determine whether or not it is valid.

Senator Mathias. You testified that, whenever there is a significant change in an operation, it goes back to the Review Committee. This is consistent with Mr. Revell's testimony yesterday. A significant change in the scope or direction of an undercover operation brings it back to the Review Committee [148] for reassessment, reapproval.

When Abscam moved from an art operation to a political corruption operation, was that reviewed by the Undercover Operations Committee?

Mr. Mullen. No, that policy was not in effect at that time. The Review Committee, as I indicated in my statement, I believe, the first meeting was in November 1978. I think the investigation had already changed direction. The only involvement of the Undercover Review Committee at that time was to run the first three payoffs, recommended payoffs by the committee. When there were requests for refunding of the Abscam operation, then those refunding requests were presented to the committee and recommendations made.

The case is now all significant changes in direction do go before the Undercover Review Committee.

Senator Mathias. But you referred to the first meeting of the Undercover Operation Review Committee as of November 1978——

Mr. Mullen. Yes.

Senator Mathias [continuing]. Which you chaired.

Mr. Mullen. That is right.

Senator Mathias. Then that brings us to the question Mr. Neal was discussing with you. That is the parentage of the asylum scenario, which, regardless of who was the father, seems to have been conceived sometime in the summer of 1979.

[149] **Mr. Mullen.** That is the current guideline, Mr. Chairman, that significant changes are brought before the committee. I seem to recall that, when the committee was established, we did not go back and pick up all ongoing operations. But, for any new ones started or there was a refunding, then they would come before the Undercover Review Committee.

Senator Mathias. Then I have just one further question. You have referred in your statement to the fact that the first several bribes were approved by the committee specifically. Then the operation changed to the practice which is currently in effect, that the committee simply approves the operation; but the individual bribes, depending on amounts and targets, are approved by the Director himself.

Mr. Mullen. In the Abscam case.

Senator Mathias. In Abscam. What about in other cases?

Mr. Mullen. Well, it could be that a case would be significant enough to require the Director's approval. We do have definitive standards. I have documents with me which I could make available to you for the record where there are specific standards as to what each level of official at FBI Headquarters can approve. For example, any bribe or payoff of $50,000 or more must be personally approved by the Director. Then it is a sliding scale from there. Say, an assistant director could pay $25,000. If a Federal elected public official is involved, the Director must approve the payoff no matter what the amount.

[150] Senator MATHIAS. If the Director was not personally involved, then would under some circumstances the committee be involved again?

Mr. MULLEN. I am not sure I understand the question, Mr. Chairman.

Senator MATHIAS. Let us say you have a case which does not involve an elected Federal official. Would the committee then be the authorizing authority for each specific bribe?

Mr. MULLEN. No. As I indicated in my statement, it was not the intention of the committee to supervise operational activities.

Senator MATHIAS. Who would authorize the amount and the actual offering of the bribe?

Mr. MULLEN. Depending on the level of the official, it could be a section chief, deputy assistant director, an assistant director. But, as the sensitivity and the amount increase, the higher the level of official that becomes involved. As I indicated, we do have a definitive scale in this regard. I would be happy to make a copy of that available.

Senator MATHIAS. If you will make that available under such arrangements as you work out with counsel.

Mr. MULLEN. I will do that.

I understand it was given to the committee this morning.

Senator MATHIAS. It was delivered this morning?

[151] Mr. MULLEN. Yes.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman. Mr. Mullen, it is still not entirely clear to me how the decision was made to change the direction and whether or not that decision received the same kind of deliberation as the original decision to begin Abscam undercover operations, beginning it as an operation dealing with stolen art and stolen securities. All the evidence we have at this point is that it was just something, a remark, as you mentioned in your statement——

Mr. MULLEN. You are referring to the scenario?

Senator HUDDLESTON. Pardon?

Mr. MULLEN. The change in direction of the investigation?

Senator HUDDLESTON. Yes; moving toward the asylum and immigration question. That it resulted principally just from a remark by Agent Amoroso on the cruise. If this is the case, then that seems to me also to be somewhat different than some of the other developments that occurred during the operations because, prior to that, the leading element in the direction of the operations were either the cooperating middleman, Weinberg, or the corrupt middleman, the Errichettis or the other people involved. They more or less led to the illegal operation or the illegal activities. In this case it is an agent of the FBI who is directing the course of the investigation toward another subject. What I am wondering is whether or not, as I [152] mentioned a moment ago, was this a deliberate, intended, preplanned, premeditated effort on the part of the agent, Amoroso? Did he go on this cruise, was this one of his specific objectives during this cruise, to direct his middleman toward trying to find out whether or not there were in fact Congressmen who would be subjected to and be subject to falling for this kind of a scam? It is not clear to me whether or not prior to this cruise Headquarters itself considered this matter and instructed Agent Amoroso to inject it into the plan and then to see what would happen. What comment have you got on that?

Mr. MULLEN. I hope I can clarify that for you, Senator. We had the information, allegations by the corrupt influence peddlers of corrupt activity and the fact that Congressmen, at least one at this point—there may have been others; I have to get my times in order here—that were involved in corrupt activities. As to——

Senator HUDDLESTON. Before this date and in connection with Abscam you had already involved Congressmen. Is that correct?

Mr. MULLEN. I have to consult my chart here.

We did have the Senator involved and then the name of one Congressman whom Errichetti identified as one who would be invloved in corrupt activity.

Senator HUDDLESTON. For this kind of corrupt activity?

[153] Mr. MULLEN. Not specifically for this kind of activity, no. The asylum scenario could not be called accidentally, as an accidental development but an idea that developed by Amoroso, as I am told, to identify those who may be invloved in this corrupt activity. After the idea of the scenario was developed locally in the field office, it was then submitted not only to FBI Headquarters but to the strike force attorneys and U.S. attorneys with regard to the legal ramifications and so forth.

Senator HUDDLESTON. It was prior, now, to the cruise in July of 19——

Mr. MULLEN. After the cruise.

I believe I mentioned this morning that the idea came to Amoroso, according to his account, as they were on the cruise and saw the vessel utilized by Somoza, the deposed Nicaraguan dictator. There was discussion about the boat and the fact that he came to the United States and then was not allowed to stay. Amoroso may have said, well, that could happen to all our clients, something along that line. There is an FD 302, the document on which we record this type of thing, which Amoroso prepared, that sets forth the scenario.

Senator HUDDLESTON. After the fact or before?

Mr. MULLEN. After it. After the boat trip. As to how the idea evolved on the local level. So, that is how it started, and then it was then submitted——

[154] Senator HUDDLESTON. As a practical thing, though, the minute that Amoroso made the suggestion to the people that he made it to, Howard Criden and others on the cruise, as a practical thing, the operation was launched at the moment because these people begin to respond immediately: yes, I know so and so, who——

Mr. MULLEN. That is right.

Senator HUDDLESTON. Once you have that information, then, in keeping with your policy of not being selective, about dealing with those, particularly those people in Congress who were pointed out by a middleman, your policy, as I understand it, was to deal with all of them——

Mr. MULLEN. That is right.

Senator HUDDLESTON [continuing]. And not say: we're going to take this one and not that one. So, once that seed had been planted and they took the bait, then you, in effect, had the operation launched.

Mr. MULLEN. That is right. The middleman—at least it had changed direction. And the direct influence peddlers or middlemen, whatever we wish to call them, they were the ones who mentioned the Congressmen. Amoroso did not at that point.

Senator HUDDLESTON. I understand. He mentioned the possibility. But at that point then Headquarters FBI had never given any consideration to this——

Mr. MULLEN. That is right.

[155] Senator HUDDLESTON [continuing]. Much less approval. They had not even thought about it.

Mr. MULLEN. That is right.

Senator HUDDLESTON. Amoroso initiated it. In effect, the operation was launched. I guess it was more than a whim but just on a remark that he happened to make on a cruise.

Mr. MULLEN. That is right.

Senator HUDDLESTON. Then that brings up a question. As an operation contemplated against the Congress, is there a lesser standard that the bureau would apply before it is launched? You did not start these others until you had considered a number of things like cost and all of the guidelines that are set out, apparently. This one was launched almost instantaneously on a hunch or an idea that a single FBI agent had while he was cruising with a group of known criminals.

Mr. MULLEN. As I have advised, it already had information indicating corrupt activity on the part of public officials. I would have to go back and review in detail the records to see how much of it there was, but there was an awful lot of talk by Errichetti and others, Katz, Feinberg, the attorney for Senator Williams, who, incidentally, is the one who brought Silvestri into the program, a lot of talk about activities on a corrupt nature that probably called out for some sort of an investigation. And Amoroso, the idea did come from him that this may be a means of looking at it.

[156] Senator HUDDLESTON. And he on his own initiative changed the direction of Abscam, in effect, on that cruise when he presented to these fellows, because they were already prepared to tell him that they did have contacts with Members of Congress who would be amenable to that kind of an operation?

Mr. MULLEN. That is right.

Senator HUDDLESTON. My time is up.

Senator MATHIAS. Senator Rudman, you say you have no further questions at this time?

Senator RUDMAN. No, Mr. Chairman.

Senator MATHIAS. Did you want to pursue another question?

Senator HUDDLESTON. I think the key thing of this whole operation is the extent to which the guidelines were actually followed in the operation. There are two somewhat minor what we might term infractions. One was the case of the MacDonald bribe, where the instructions were to give the money directly to the principal. That, as was demonstrated this morning, is an arguable thing.

The other one was in the *Jenrette* case, where the money went to this attorney. Now, I know that the results were the same, as if they had been given, but the fact was the instructions were to give the money only to the principals, the persons who were targeted at that point and being subject to the bribe.

Were there other infractions, to your knowledge? Was [157] there any disciplinary action taken against any agent for not following instructions or guidelines during this operation?

Mr. MULLEN. I do not like to refer to them as infractions. There were investigative decisions. In the *Jenrette* case I made that decision. Judge Webster was not available. I advised him immediately by phone that there had been a change. If I had to sense his thought on it, I do not think he was pleased with the change at the time and that the decision had been made. But I again would weigh factors. Jenrette in the meetings with the undercover operatives was attempting to lay out very elaborate schemes, for example, having an attorney pick up the payoffs. He also thought if he was removed from the actual payoff in some way, that the bribery statute would not apply. Yet, he made a statement that I've got larceny in my blood and I'll take it in a god-damn minute.

I had to consider those things. There was every indication that here was a corrupt individual. So, I stipulated two things: that the strike force attorney agree to this change in procedure, and that he would acknowledge immediately by phone receipt of the money. The strike force attorney had concurred and he did call and acknowledge receipt and then in later meetings acknowledged receipt of the money.

So, it was not an infraction. It was a judgmental decision that was made. It did not go along exactly with the instructions, but in this case it worked out.

[158] Senator HUDDLESTON. Yes, as I say, the result was undoubtedly the same. But it raises a question whether the instructions are there to be followed or whether there is a great deal of flexibility to get around the instructions if you think you can still accomplish the same purpose.

Mr. MULLEN. There is not a whole lot of flexibility. It was not a decision that I took lightly.

Senator HUDDLESTON. Was that a decision that only you could have made?

Mr. MULLEN. No. Judge Webster could have made it, had he been available. I believe I was the highest level official available at the time.

Senator HUDDLESTON. That was bucked up to as high as it could go?

Mr. MULLEN. Yes.

Senator MATHIAS. Counsel?

Mr. NEAL. I just have one. Mr. Wheeler may have one or two. I want to pose you a hypothetical. We are talking about costs of undercover operations. You recognize that there are costs to the innocent people brought in. Let us suppose that in the course of an undercover operation—and let us make this hypothetical, but you and I know that it either has occurred or is bound to occur—in the course of an undercover operation some con man somewhere else who may be connected with the FBI [159] or he may not be, he learns of your scenario and he is being used in an operation. Are you with me?

Mr. MULLEN. I am with you.

Mr. **Neal**. He learns what you do, how you convince these people that we are legitimate crooks, and so forth. And he goes out somewhere else and, in using that scenario, he scams innocent citizens. Are you with me?

Mr. **Mullen**. I am with you.

Mr. **Neal**. OK. You then learn that this con man is out there using your scenario to scam innocent citizens. You learn he is doing that. You could stop him and avoid losses. To stop him, however, you have to expose and thereby terminate your undercover operation. What do you do?

Mr. **Mullen**. I think we are getting into the crux of an actual ongoing lawsuit, but we are in a hypothetical situation.

Mr. **Neal**. Let us make it totally hypothetical, given those hypothetical——

Mr. **Mullen**. I would say you would have to weigh the greater harm versus the greater good. If, for example, continuing an undercover operation was going to result in the saving of 10 lives and then to let this other operation go on over here would result in a minimal financial loss, of course, weigh with the lives. If this other operation was going to result in the loss of life and you were going to get a few convictions over here, why, you would terminate the [160] operation and save the lives.

That is about the best answer I can give you.

Mr. **Neal**. What you are saying you would do under my hypothetical, you would weigh the cost to the innocent citizens against the benefit of continuing an effective undercover operation.

Mr. **Mullen**. You would do that and you would also attempt, if you could, minimize any impact——

Mr. **Neal**. Suppose you cannot do that. Let us make it stop. Let us make it stop.

Mr. **Mullen**. Well, I do not know that I can enhance my answer.

Mr. **Neal**. So, you would weigh it and you determine the costs of the loss to the citizens against the effectiveness of continuing the undercover operation. And maybe in some cases you would terminate it. In some cases you would say that the benefit of the undercover operation outweighs the cost of the losses.

Mr. **Mullen**. That is correct, Mr. Neal.

Mr. **Neal**. Thank you.

Senator **Mathias**. Mr. Wheeler?

Mr. **Wheeler**. Thank you, Mr. Chairman. I have a few questions, Mr. Mullen, to try to clarify a couple of issues that have been raised.

You are aware, are you not, that on March 30, 1979, there [161] was a meeting that lasted for approximately 4½ hours between Angelo Errichetti and Melvin Weinberg, and this was the day that immediately preceded the bribery payment that was to take place for Kenneth MacDonald?

Mr. **Mullen**. I believe Mr. Neal referred to that this morning.

Mr. **Wheeler**. That is right. But one thing that did not come out—I want to make sure that you are aware of it and the record is clear on it—is that it was at that meeting on March 30, 1979, that Errichetti allegedly gave Weinberg two documents. One is a handwritten list of approximately eight politicians, including two Congressmen, one of whom turns out to have been Michael Ozzie

Meyers, and another unnamed Congressman. He also allegedly gave Weinberg at that meeting a picture book of all the New Jersey State legislators with check marks by each one who, according to him, to Errichetti, was corruptable.

So, this 4½-hour meeting was not just any meeting, and it did not just occur before the critical payoff to Kenneth MacDonald. But, in addition, it was the meeting at which Errichetti first named a significant number of politicians, including Congressmen, to Weinberg. Is not that right?

Mr. **Mullen**. I do not believe that is correct, Mr. Wheeler. As I recall, the circumstances of a list being furnished of State legislators with check marks as to those who [162] could be bought, along with the names of Congressmen, were given to Anthony Amoroso after Errichetti got them out of the trunk of his car. I though this occurred after the payoff to MacDonald. Now, I could stand corrected, but perhaps that is something we ought to research and clarify for the record.

[The following was submitted for the record by the FBI in a letter to the committee dated November 4, 1982. "On March 30, 1979, Angelo Errichetti provided Melvin Weinberg with a handwritten list of allegedly corrupt public officials. On this same date, Mr. Weinberg gave this list to Special Agent (SA) John Coughlin, then assigned as the administrative case Agent for Abscam in the Hauppauge Resident Agency. On March 31, 1979, Angelo Errichetti delivered to SA Anthony Amoroso, Jr., a picture book of New Jersey State Legislators with check marks designating those who were allegedly corrupt."]

Mr. **Wheeler**. I represent to you, Mr. Mullen, that documents in the files of the Department of Justice reflect or include, among other things, a teletype from the FBI in the field, Brooklyn-Queens, to FBI Headquarters stating that it was on that date that these documents were provided to Mel Weinberg, and copies of those documents were forwarded to FBI Headquarters. So, that is what the documents reflect, in any event, which is all, of course, we have to go on.

Mr. **Mullen**. That is my recollection of it. Again, Mr. Wheeler, I will determine the facts and see that they are submitted to the committee.

Mr. **Wheeler**. Let me make one other note. You said and you confirmed what Mr. Revell said yesterday, that the FBI's policy, a very firm policy at this time, was that any material conversation between an informant and a potential target or a middleman was to be either recorded or documented by a 302.

Mr. **Mullen**. Not only any informant or any middleman but any interview in any case that may become testimony should be reduced to an FD 302, normally within 5 days unless there are unusual circumstances that prevent the recording within 5 [163] days.

Mr. **Wheeler**. And you explained that perhaps an explanation for the failure to record the March 30 meeting by Mel Weinberg and the failure to record other meetings might have been because of, for example, security reasons or other such problems.

Mr. **Mullen**. I am not saying, in responding to that question or observation, I cannot positively state that was the reason. But, if this occurred, I suspect that would be the reason.

Mr. **Wheeler**. But security reasons or the exigencies of the moment could not possibly explain, could they, the failure of the undercover agent responsible for dealing with Weinberg to record in a 302 for further review the 4½-hour meeting that occurred on March 30, could it?

Mr. **Mullen**. There probably should have been a 302.

Mr. **Wheeler**. Probably should have been? Or under FBI's policy there should have been?

Mr. **Mullen**. Under FBI policy of what occurred, if a meeting lasted 4½-hours, in this undercover operation, if the conversation that took place was not to have become testimony, I think a meeting of that length, of that duration, in this important investigation, if not on a 302, should have perhaps been recorded in a memoradum form because I believe it probably was pertinent.

[164] Mr. **Wheeler**. And are you aware, are you not, Mr. Mullen, that as early as April 1979 documents in the files of the FBI of the Department of Justice showed that assistant U.S. attorneys in New Jersey, Mr. Plaza and Mr. Weir, whose names have come up before the Edwards committee, were already complaining to their superiors within the Department of Justice that in this important operation aimed at political corruption important coversations were occurring that were unrecorded and that were undocumented by any 302. As early as April 1979 that complaint was being made by attorneys in the Department of Justice.

Mr. **Mullen**. Mr. Plaza and Mr. Weir have made a lot of complaints. I disagree with most of everything that they have complained about. But they probably made this—I am not saying they did not make the observation; maybe they did. But it was not an institutional thing whereby we were intentionally not recording. I would hope there were very few instances of not preparing FD 302's. But, as I indicated in my earlier testimony, there were over 1,000 recordings. This particular area has been reviewed time and again by the courts and found to be without merit, with impact upon the investigation or the individual rights of the subjects.

Mr. **Wheeler**. But, Mr. Mullen, this committee is trying to determine how closely the guidelines are in fact followed irrespective of the judicial precepts that are set. Yesterday, [165] Mr. Mullen, Mr. Revell said that in the case of an individual informant who had been terminated because he had been found by the FBI to have been running a scam on the side, if that person were ever so used again, special safeguards and checks would be put on him by the FBI. Now, we know today that Melvin Weinberg was exactly such an individual. We now know that on March 30, 1979, an important meeting before a payoff was not recorded. We know that as early as April that messages were being sent by assistant U.S. attorneys, that there were more meetings that were occurring that were unrecorded, and there were no 302's. If anything, one would have thought that someone would be coming down pretty hard under FBI policy on Mel Weinberg or on the agents or both for violating FBI policy, given those facts, would not you?

Mr. **Mullen**. No, Mr. Wheeler. I think you have to take a look at the overall program, the strain, the stress the agents were under. I would like to have every single word recorded in some form or another, but I can understand in dealing with human beings how this could occur. We have the rules in place. We expect them to be followed. When they are not, we like to know why. If we see a pattern on the part of an individual agent of disobeying, action would be taken. But I do not believe we have established this pattern in the Abscam case.

Mr. WHEELER. On page 19 of your statement, Mr. Mullen, you said in the one instance in which Melvin Weinberg met with [166] Senator Williams prior to the meeting with the undercover agents, the supervisory agents immediately corrected the problem by instructing Weinberg that he was never again to meet with Congressmen alone. The practice was never repeated. In fact, Mr. Mullen, is it not the case that the meeting with Senator Williams that you are referring to there occurred on June 28, that the meeting at which Weinberg was so instructed occurred on August 9?

Mr. MULLEN. You say June 28 and August 9?

Mr. WHEELER. That is right.

Mr. MULLEN. I believe it would be best to ask the supervisor exactly when the meetings occurred. I am not aware of when the meetings took place.

I am advised that at a much earlier date right after the meeting took place with Senator Williams that Mr. Sharf of the strike force cautioned Mr. Weinberg.

Mr. WHEELER. Do you have the date of that meeting?

Mr. MULLEN. I will have to submit that for the record. I was not aware of the time periods here involved.

[The following was submitted for the record by the FBI in a letter to the Committee dated December 7, 1982. "On August 5, 1979, Mr. Weinberg was cautioned by Strike Force Attorneys Lawrence Scharf and John Jacobs regarding Mr. Weinberg's coaching of Senator Williams."]

Mr. WHEELER. Mr. Mullen, you also said in response to Mr. Neal's questions that Mr. Weinberg's salary was raised from $1,000 a month to $3,000 a month to avoid having to pay bonuses.

Mr. MULLEN. That was one of the reasons, one of the reasons, yes. That was correct.

Mr. WHEELER. But, in fact, both the $5,000 bonus for the [167] Errichetti bribe and the $15,000 bonus for MacDonald were paid after the salary increase that was given to Melvin Weinberg, were they not?

Mr. MULLEN. It could have well have been the case. It would mean that the paperwork, the recommendations were being processed prior to the time the decision was made to increase the salary. In discussion earlier, out of session, we have offered and will make available a complete accounting of what was paid to Mr. Weinberg, and I am sure this will show up at that time.

[See exhibit 12, pages 249–54 *infra*.]

Mr. WHEELER. The salary increase to $3,000 was approved on February 26, 1979. The first request for the $15,000 bonus was made on May 14, 1979. So the documentation does not support your statement. They were several months apart, as a matter of fact.

Mr. MULLEN. Again, I will have to get that for the record. I just cannot answer it because I do not have the documents with me.

Mr. WHEELER. All right. Regarding the INS official that we talked about on September 14, the ringer, the discussion so far has focused entirely on what effect that might have had on your willingness to deal with Mayor Errichetti. But in fact the ringer was Howard Criden's law partner. Is not that right?

Mr. **Mullen**. That is right.

Mr. **Wheeler**. Yet you continued to deal with Howard Criden [168] as a middleman and to rely on his representations even to the extent that, when he said that he could bring in Congressman Thompson and Congressman Murphy, you took his word for that.

Mr. **Mullen**. I am advised that we had no idea until the case was terminated that this was Mr. Criden's law partner. That is when we found out who he was.

Mr. **Wheeler**. All right. And the last question that I want to ask you really goes to clarification of your response to Senator Mathias with respect to Jenrette and Stowe. Let me give you some dates and ask you and Mr. Ricks to confirm these.

Although it was in October 1978 that Stowe said he had a Congressman who was as crooked as he, it was not until April 19, 1979 that Stowe identified that Congressman as Jenrette and also said on April 19, 1979 that Jenrette would, in fact, take a payoff. Is not that right.

Mr. **Ricks**. Do you want us to verify your dates?

Mr. **Mullen**. Let us assume that it is right.

Mr. **Wheeler**. The further facts are, on May 21, 1979, pursuant to an indices check by the FBI, it was determined that there were other possible corrupt dealings in Congressman Jenrette's past. And on July 11, 1979, a meeting was scheduled to be held with Congressman Jenrette, to be held on August 6, 1979, but that meeting was canceled on July 21, 1979. So, again, just by way of clarification, there was not a complete gap between October 1978 and late 1979. Do those facts ring a [169] bell?

Mr. **Mullen**. It does not ring a bell. I will accept them as correct. But we are getting into areas where there was not prosecution. You have jogged my memory on this. There were other ongoing investigations of Congressman Jenrette throughout this period. He acknowledges that himself during the meetings. That could be another reason why the other allegation, as big a crook as I, was not pursued at that time. I do not know that to be the case, but it is a plausible reason.

Mr. **Wheeler**. Thank you, Mr. Chairman.

Senator **Mathias**. Thank you, Mr. Wheeler. Mr. Mullen, Senator Huddleston was forced to leave for another meeting. He asked me to make a request for the record that you would identify changes in the guidelines which you mentioned as having resulted from actual experience and the conduct of operations. Can you do that for him?

Mr. **Mullen**. I will do that.

[The following was submitted for the record by the FBI in a letter to the committee dated November 4, 1982. "As previously testified to by FBI representatives, the Attorney General's Guidelines on Undercover Operations have not been changed as yet. To date, the FBI has merely interpreted certain sections of these guidelines in such a way as to resolve problems or inconsistencies discovered during the implementation process. Thereafter, we advised the Attorney General of our interpretations."]

Senator **Mathias**. Thank you.

Are there any further questions from counsel?

Mr. **Neal**. No, sir.

Senator **Mathias**. If not, the committee will stand in recess until the hour of 10 tomorrow morning.

[Whereupon, at 4:45 p.m., the committee was recessed, to reconvene the next day.]

EXHIBIT 9

Office of the Attorney General
Washington, D.C. 20530

DEC 15 1976

TO: Clarence M. Kelley
Director
Federal Bureau of Investigation

FROM: Edward H. Levi
Attorney General

SUBJECT: USE OF INFORMANTS IN DOMESTIC SECURITY, ORGANIZED CRIME, AND OTHER CRIMINAL INVESTIGATIONS

Courts have recognized that the government's use of informants is lawful and may often be essential to the effectiveness of properly authorized law enforcement investigations. However, the technique of using informants to assist in the investigation of criminal activity, since it may involve an element of deception and intrusion into the privacy of individuals or may require government cooperation with persons whose reliability and motivation may be open to question, should be carefully limited. Thus, while it is proper for the FBI to use informants in appropriate investigations, it is imperative that special care be taken not only to minimize their use but also to ensure that individual rights are not infringed and that the government itself does not become a violator of the law. Informants as such are not employees of the FBI, but the relationship of an informant to the FBI imposes a special responsibility upon the FBI when the informant engages in activity where he has received, or reasonably thinks he has received, encouragement or direction for that activity from the FBI.

To fulfill this responsibility, it is useful to formulate in a single document the limitations on the activities of informants and the duties of the FBI with respect to informants, even though many of these limitations and duties are set forth in individual instructions or recognized in existing practice.

As a fundamental principle, it must be recognized that an informant is merely one technique used in the course of authorized investigations. The FBI may not use informants where it is not authorized to conduct an investigation nor may informants be used for acts or encouraged to commit acts which the FBI could not authorize for its undercover Agents. When an FBI informant provides information concerning planned criminal activity which is not within the investigative jurisdiction of the FBI, the FBI shall advise the law enforcement agency having investigative jurisdiction. If the circumstanc are such that it is inadvisable to have the informant report directly to the agency having investigative jurisdiction, the FBI, in cooperation with that agency, may continue to operate the informant.

A. Use of Informants

In considering the use of informants in an authorized investigation, the FBI should weigh the following factors --

1. the risk that use of an informant in a particular investigation or the conduct of a particular informant may, contrary to instructions, violate individual rights, intrude upon privileged communications, unlawfully inhibit the free association of individuals or the expression of ideas, or compromise in any way the investigation or subsequent prosecution.

2. the nature and seriousness of the matter under investigation, and the likelihood that information which an informant could provide is not readily available through other sources or by more direct means.

3. the character and motivation of the informant himself; his past or potential involvement in the matter under investigation or in related criminal activity; his proven reliability and truthfulness or the availability of means to verify information which he provides.

4. the measure of the ability of the FBI to control th informant's activities insofar as he is acting on behalf of the Bureau and ensure that his conduct will be consistent with applicable law and instructions.

5. the potential value of the information he may be able to furnish in relation to the consideration he may be seeking from the government for his cooperation.

B. Instructions to Informants

The FBI shall instruct all informants it uses in domestic security, organized crime, and other criminal investigations that in carrying out their assignments they shall not:

1. participate in acts of violence; or

2. use unlawful techniques (e.g., breaking and entering, electronic surveillance, opening or otherwise tampering with the mail) to obtain information for the FBI; or

3. initiate a plan to commit criminal acts; or

4. participate in criminal activities of persons under investigation, except insofar as the FBI determines that such participation is necessary to obtain information needed for purposes of federal prosecution.

Whenever the FBI learns that persons under investigation intend to commit a violent crime informants used in connection with the investigation shall be instructed to try to discourage the violence.

C. Violations of Instructions and Law

1. Under no circumstances shall the FBI take any action to conceal a crime by one of its informants.

2. Whenever the FBI learns that an informant used in investigating criminal activity has violated the instructions set forth above in furtherance of his assignment, it shall ordinarily notify the appropriate law enforcement or prosecutive authorities promptly of any violation of law, and make a determination whether continued use of the informant is justified. In those exceptional circumstances in which notification to local authorities may be inadvisable, the FBI shall immediately notify the Department of Justice of the facts and circumstances concerning the investigation and the informant's law violation, and provide its recommendation on reporting the violation and on continued use of the informa
The Department shall determine:

a. when law enforcement or prosecutive authorities should be notified of the law violation;

b. what use, if any, should be made of the information gathered through the violation of law, as well as the disposition and retention of such information; and

c. whether continued use should be made of the informant by the FBI.

3. Whenever the FBI has knowledge of the actual commission of a serious crime by one of its informants unconnected with his FBI assignment, it shall ordinarily notify the appropriate law enforcement or prosecutive authorities promptly make a determination whether continued use of the informant justified. In those exceptional circumstances in which notification to local authorities may be inadvisable, the FB shall promptly advise the Department of Justice of the facts and circumstances concerning the investigation and the informant's law violation, and provide its recommendation on reporting the violation and on continued use of the informa The Department of Justice shall determine:

a. when law enforcement or prosecutive authorities should be notified of the law violation; and

b. whether continued use should be made of the informant by the FBI.

4. In determining the advisability of notifying appropriate law enforcement and prosecutive authorities of crimina activity by FBI informants the FBI and the Department of Justice shall consider the following factors:

a. whether the crime is completed, imminent or inchoate;

b. seriousness of the crime in terms of danger to life and property;

c. whether the crime is a violation of federal or state law, and whether a felony, misdemeanor or lesser offense;

d. the degree of certainty of the information regarding the criminal activity;

e. whether the appropriate authorities already know of the criminal activity and the informant's identity; and

f. the significance of the information the informant is providing, or will provide, and the effect on the FBI investigative activity of notification to the other law enforcement agency.

EXHIBIT 10

Affidavit from Marie Weinberg, Mel Weinberg's wife, regarding various alleged improper activities by FBI Special Agents, her husband, and others and affidavit of Indy Badhwar, a journalist associated with Jack Anderson, about Badhwar's telephone conversations with Mrs. Weinberg related to ABSCAM consistent with the disclaimers in her affidavit and attached transcript of several such telephone calls.

[In the U.S. District Court for the District of Columbia, Criminal Division, CR 80-340]

UNITED STATES OF AMERICA, PLAINTIFF, v. RICHARD KELLY, EUGENE ROBERT CIUZIO, AND STANLEY WEISZ, DEFENDANTS

County of Palm Beach, State of Florida, ss:

AFFIDAVIT OF MARIE WEINBERG

Cynthia Marie Weinberg, being duly, sworn deposes and says

1. I am married to Melvin Weinberg. I am a resident of the State of Florida and I will disclose my home address to the Court in camera. The reason for my refusal to place my address in this affidavit is my fear that I shall come to harm if my home address is known.

2. Prior to our move to the State of Florida where I presently reside, my husband, my son, J.R., and I lived at 131 Split Cedar Drive, South Hauppage, Long Island, New York. This was during the period of the ABSCAM investigations.

3. After my husband began to work with the FBI in these investigations a number of FBI agents would visit my home from time to time. They included John Goode, Anthony Amoroso, Jack McCarthy, Tom McShane and others. They spent time in my home socializing with my husband and myself and they knew the layout of our house. Sometime in 1978 or 1979 my husband, Mr. Weinberg, brought home three Sony Trinitron television sets with 17" screens. He said that they were a gift from a friend. He also brought home an entire stereo system, including two speakers and a wooden case with a glass magnetic door and two shelves and in the same year he brought home a Betamax video recorder. He also brought home a microwave oven.

4. My husband told me that all of these were "gifts" from a "friend."

5. In 1980, during one of the ABSCAM trials my husband called me, very excited and asked me to move the microwave oven and the video recorder out of our house to a place where no one would know their whereabouts. He cautioned me that no one should see me moving this equipment. My son, J.R. and I moved the microwave oven and the video recorder to a condominium apartment nearby which was vacant and to which I had the keys. Those two items stayed in that condominum for several weeks until my husband called and told me to bring them back to my apartment. With regard to the microwave oven my husband, in my presence, removed the serial numbers one night and he did this with a screw driver which he asked me to get for him and I watched him remove the serial plate from the microwave oven.

6. Prior to the foregoing occurrences and while we were still at our Long Island home the following agents visited our home and saw the microwave oven; the audio equipment complete with speakers; the Betamax video recorder and the three Sony TV's were in boxes in the garage. When the time came for us to move to Florida, Special Agent John Goode was very helpful; he brought packing boxes and tape for us to pack these items for shipment. Mr. Amoroso sealed the crates after the items were packed and he did a good deal of that work until he received a telephone call from his mother that day that his father had passed away. Thereafter Mr. Amoroso left the house.

7. At about the same time my husband decided that we would not take a good deal of the furniture and other items with us so he gave to Mr. Amoroso two bedroom suites and a number of Mr. Weinberg's sport jackets and other clothes; he gave to Mr. Goode and Special Agent Amoroso the living and dining room suites complete with crystal table lamps. He gave to "Carol" who was working as a secretary in the ABSCAM office a car load of books; he also gave to Mr. Amoroso five cases of books.

8. At that time Mr. Jack McCarthy, Special Agent of the FBI, expressed an interest in our Thomas organ which was worth about $4,000. Mr. Weinberg gave the organ to Mr. McCarthy and I have no knowledge as to whether Mr. McCarthy paid him anything for it. In addition, Special Agent Tom McShane wanted my Perzian lamb coat for his mother and my blue fox coat for his wife. Mr. Weinberg gave those items to Mr. McShane and I do not know what, if anything, Mr. McShane paid for them. The reason I gave up those coats is that Mr. Weinberg told me I certainly would not

need fur coats in Florida. In addition to the foregoing we had a stereo shelf case on rollers which was to be used for the placement of the stereo equipment I have described above. Mr. Weinberg gave that to John Good.

9. Sometime between the end of 1978 and the beginning of 1978, I drove my husband, Mr. Weinberg to a meeting with Mr. Angelo Errichetti, the Mayor of Camden at the Holiday Inn off the Long Island Expressway. I drove him in my Mark IV Continental. Mr. Weinberg told me to park the car on the side of the road. He said he would just be a short time and he had to pick something up from Mr. Errichetti. He returned to the car sometime thereafter carrying a briefcase and sat down with me patting the briefcase and saying "forty-five." I know that Mr. Amoroso, who was supposed to be watching my husband didn't know about this because my husband told me he had "ducked" him. I had met, in the company of my husband and my son J.R., Mayor Errichetti before. My son was there on one such occasion but there were several occasions of that nature and on one such occasion, I was introduced to Mayor Errichetti as Mr. Weinberg's "sister-in-law."

10. On another occasion, after we moved to our Florida home, there were forty-four odd recorded tapes collected on my kitchen counter in my Florida home. One day, two FBI agents, one named Gunnar Askeland and another came to collect the tapes. Since they were difficult to carry I gave them a plastic lawn bag which they put in the trunk of a car. A month or so later the agents called me and asked for the tapes and I told them I had given them to them. I don't know whether they ever found the forty-four tapes. In November 1981, I learned that my husband, Mr. Weinberg, had purchased another condominium in Martin County, Florida, where he was living with Evelyn Knight. Thereafter I learned that she had secured a court order to change her name to Evelyn Dawn Weinberg. Subsequently, my son J.R. visited that condominium and told me that my husband had bought three additional Sony TV sets, one of which has a white cabinet and the other two are dark cabinets. I understand that my husband purchased another video recorder for Ms. Knight's establishment. The source of my information for the three Sony television sets and the video recorder in that condominium is my son J.R. who saw them and described them to me. In or about November of 1979, after I found out that my husband was living with Evelyn Knight in Martin County, I called Bob Greene of Newsday whom I had met and who wrote the book about my husband entitled "The Sting Man." I told Mr. Greene that I had found the black book meaning the 1980 diary of my husband. Mr. Greene told me that that book was very dangerous and that "they would kill for that." He further asked me to put it in a vault and I told him I would not. Later on, because of fear, I burned the diary. Mr. Greene, however, has in his possession, according to his statement to me, Mr. Weinberg's 1978 and 1979 diaries.

11. I have been speaking to Mr Indy Badhwar of Jack Anderson's office about these matters since early November 1981. Thereafter, I spoke with him again on November 7, 1981, November 20, 1981, and on November 22, 1981, I personally met with Mr. Badhwar at West Palm Beach, the Holiday Inn. It was on that date that I confirmed the meetings with Errichetti, above described, the receipt of the microwave oven by my husband in New York and the gifts of furniture to the FBI agents. On the front of my condominium at midnight and they had remained there until after 2:00 a.m. My neighbor went out and asked them who they were and what they were doing and they responded that they were FBI agents and that my condominium was under FBI surveillance.

13. On the early morning of January 9, at approximately 7:00 a.m., Mr. Badhwar, Mr. Bast and Gordon Freedman, a producer for ABC Television, came to my home and took videotapes of me pointing out the microwave oven, the video recorder, the three Sony television sets, the Harman Kardan receiver and the other equipment above described that my husband said were "gifts" to him from a "friend." After Mr. Badhwar and Mr. Freedman left my condominium that day I remained with Mr. Bast for a short time when two FBI agents came to the door. They identified themselves as Joseph Smith, FBI No. 8190 and Ivan Ford, FBI No. 9537 and stated to me they wanted to discuss allegations of FBI misconduct and for me to show them any documentary evidence that I had. They were told that if they wanted to speak to me they would first have to get my attorney's consent and I gave them his name and phone number.

14. I make this affidavit because I feel my husband committed perjury with the knowledge of the FBI which injured a number of innocent people and I want the truth to be known. I will be glad to testify under oath in any court as to the truth of the foregoing.

CYNTHIA MARIE WEINBERG.

Subscribed to before me this 16th day of January, 1982.

JEANETTE A. WRINN,
Notary Public.

City of Washington, District of Columbia, ss:

EXHIBIT 11

AFFIDAVIT OF INDY BADHWAR

Indy Badhwar, being duly sworn, deposes and says:

1. I am a journalist associated with syndicated columnist Jack Anderson. My office address is 1401 16th Street, N.W., Washington, D.C. 20036.

2. During the past year I have written several columns relating to ABSCAM and have engaged in an investigation of the conduct by the Justice Department of ABSCAM.

3. In November of 1981, I was contacted by Marie Weinberg, the wife of Melvin Weinberg. Over the past three months I have had several phone conversations and personal interviews with Marie Weinberg.

4. I have reviewed the affidavit of Marie Weinberg dated January 16, 1982. The information contained in the affidavit is consistent with information provided to me by Marie Weinberg during my earlier interviews and phone conversations with her.

5. Several of my telephonic conversations with Marie Weinberg were recorded. Transcripts of these conversations have been prepared under my supervision and are attached hereto. I have reviewed the transcripts and they represent true and accurate transcriptions of phone conversations held between myself and Marie Weinberg. I have maintained in my custody the original tape recordings of these telephonic conversations.

6. Attached to this affidavit are photographs of: (a) one Sony Betamax Videocassette Recorder, Model No. SL-5600, No. 220882; (b) one Harman Kardan NK 560 stereo receiver; (c) one Optonica dolby stereo cassette deck; (d) one General Electric microwave oven including portion of rear showing former location of serial number plate; (e) three Sony Trinitron color television sets; (f) two Genesis loudspeakers.

7. The above-listed electronic equipment was observed by me in the apartment of Marie Weinberg on January 8, 1982. The attached photographs were taken in my presence and I am in possession of the original negatives of such photographs.

INDY BADHWAR.

Subscribed to before me this 18th day of January, 1982.

CAROL N. WITTIONSLIE,
Notary Public.

INTERVIEW WITH MARIE WEINBERG—TAPE I

INDY. Hello.

MARIA. Hello, Indy?

INDY. Hi, Maria I've been calling you all morning—has your phone been busy or what?

MARIA. No I, I, was in, I was just out for about an hour.

INDY. Yeah, what happened ?

MARIA. Mmm, nothing. I haven't heard from Mel. I spoke to him the other night.

INDY. Uh, huh.

MARIA. I spoke to Bob Greene first of all and Bob Greene said, uh, I asked him if he'd ever interviewed Evelyn. He said no, and from what Mel told me, was that Evelyn was in England and her husband wouldn't consent to a, ah, interview, you follow me?

INDY. Yeah.

MARIA. This is the story he gave me—I told you he's been lying all along.

INDY. Oh, God.

MARIA. So when he walked in, you, I try to say to him, you know, look I know about it. I saw the place. He says, well you know I'm the biggest liar in the world, uh, I, I, mean I looked at him and there was no way to argue. It was the same thing in court, the lawyer asked him the wrong questions and he just—he came out smelling like a rose.

INDY. This is just terrible, he'd do it to one of his own though, that, that's——

MARIA. Well.

INDY. Worse

MARIA. It's not a matter like—19 years and he's livin with her 14 years and I think he is married to her.

INDY. Well thats what I heard.

MARIA. I belive it, I believe it, he's got a whole life up there in, ah, stewart.

INDY. Has he just walked away or what?

MARIA. I don't—he called, ah, I had spoke to Bob Greene, anyway, an I mentioned to Bob just off hand—I told you one lie, I'm sorry I did lie I said I burned the book—I didn't—but I didn't put it in the house I put it somewhere very safe, so I told Bob—I wanted to see what he would say if he knew anything. He said that he had the books to 78 and, ah, to 79 but he doesn't have an 80—I said I have the 80, Okay.

INDY. Uh, Uhm.

MARIA. So he said, well a, don't do anything rash, don't do anything. He said, you know their signing for a picture.

INDY. Uhn, uhm.

MARIA. With John Belushi supposed to be starring. 'That's why Mel's running all over like mad—you know right now it's an ego trip or something.'

INDY. Yeah.

MARIA. With his, a, he thinks this is great. He did commit perjury on the stand.

INDY. Where?

MARIA. Ohhhh, I know of three things and I was with—I mean, a, I was there

INDY. What was that?

MARIA. Well ah, (slight laugh)

INDY. Tell me.

MARIA. Indy?

INDY. Uhn, uhm.

MARIA. I'm just gonna hold a second and

INDY. Sure

MARIA. But there are three definite things and ah, also something with the south (inaudible) sewer district? Vincent Cuiti that was in the papers. Vince got convicted.

Indy. Uh, huh

Maria. Vince was innocent.

Indy. Well are you talking about perjury on the stand in New York in the, in the present trial or the older trial?

Maria. I'm talkin the present and the older one

Indy. Yeah

Maria. With Errichetti

Indy. Uh huh

Maria. And ah, it's a shame

Indy. Did he commit perjury in the Williams trials too?

Maria. Ah, that, you see I couldn't, you see I can't say because I didn't know that much about the Williams trial, all I know on Williams is that ah, he talked a lot with Feinberg. I mean we had an answering service in this house here.

Indy. Uh, huh.

Maria. I didn't know it but when we moved down the agents didn't have an office, so they callod Andy? Communications there in ah, I think West Palm Beach, and this guy came up here and I said whats that? And he said well, and I says look I'm not gonna stay in all day and I don't wanna get involved answering phones—I don't know how to answer with people.

Indy. Uh, huh

Maria. And he said, don't worry, you pick this up and you'll be able to hear it and ah, what you do is when the tapes are finished—just turn it off—play it back and when we call up just give us a message—people will only leave a message—so it was in here, ah, oh, it hadda be a good six months—till he got everything set up down in Del Rey, you know from what I heard, I was just getting bits and drabs.

Indy. Uh, huh.

Maria. And then, you know when all the stuff happened, you know I'd read about it in the paper.

Indy. Oh God.

Maria. See nothing was in the paper down here really.

Indy. Yeah, yeah that's true.

Maria. But he had ah, Bob Greene mail the Newsday up here to us.

Okay? And he wanted me to take out clippings—so that's the only thing I knew I was reading clippings.

Indy. Yeah.

Maria. And then I came across one, when I'd ask him he'd say—Ohh, there gonna destroy me on the stand—he says I'll fix em good—they asked him, they asked him the wrong questions that's all. Brown was a good Attorney—but when he said to Brown, er, ah, aren't you the smartest con man or somethin like that Mels answer was 'How could I be so smart if I got caught' naturally, you know he had an audience.

Indy. Oh God, yeah

Maria. And he came in here and he just—he knew he got caught dead to rights so rather than face me he just started yellin, you always knew I was the biggest liar—they said it in court I'm the biggest liar of all, . .er, ah, and walk out. And my son and I he just left us sitting here.

Indy. Has he left New York?

Maria. I don't know he must've left he hasn't ah, I spoke to him the other night he got(drunk) he's talkin to Bob Greene on the phone

Indy. Yea

Maria. And ah, I don't know how much Bob knows, well Bob, listen he's getting a cut on the book, so, but I think he duped Bob a little bit. I don't think Bob, I don't think Bob trusts him.

Indy. Yeah, you see I don't know about this movie thing—it might just be another con game—

Maria. No, no, no, Bob told me, ah, he said that there—gonna be signing and ah, you know, don't do anything rash and then I told Mel, I said, while he was here, I said look, I, I, you know it doesn't pay, I says just give me a divorce.

Indy. Uh, huh.

Maria. So, he kept insisting on a three month period, I said for what? I said you know the more I find out——

Indy. The worse it gets—the more intolerable it becomes.

Maria. I read the book you know, eh, eh, at the ending he sails off on this boat the UP YOURS—well he was tellin me that this boat belonged to a friend of his—my neighbor next door works in the Marina, he brought the boat down here. He brings it in our neighborhood—and then he sold it. She wanted power of Attorney from him and he wouldn't give it, so, I, I said look I don't know anything about it, you know, so I figured it was a legitimate thing, you know, she just gave me the ah, a, the ah, whole sales thing on the boat, you know and Evelyn Weinberg.

Indy. Yeah.

Maria. You didn't get anything in the mail yet did ya?

Indy. No.

Maria. I mailed out, ah, a, a paper to ya, but I sent it to, you know who I sent it to?

Indy. Uh.

Maria. I didn't know your address and ah, I was told originally United Features syndicate.

Indy. Oh God, oh God it'll never get here.

Maria. 200 Park—but I put it to attention Jack Anderson, Columnist, Washington and your name under it.

Indy. When did you sent it?

Maria. Ah, last week, ah, last friday.

Indy. Yeah, what, what was it

Maria. Ah, just writing on what the whole thing is goin on down here

Indy. Yeah, yeah, God last week the United Features

Maria. United Features sent it 200 Park Avenue

Indy. New York

Maria. That's the address I had yeah

Indy. Let me give you the address here Marie

Maria. I've got it—North East ah, oh I've got it written down

Indy. No it's 1401

Maria. Oh, ah let me write it down again just to make sure 1401

Indy. 16th Street N.W.—it's Washington D.C. and the zip is 20036

Maria. And I'll put it to your attention

Indy. Yeah, just care of Jack Anderson—Indy Badhwar

Maria. So on these other things I have

Indy. You know I'd love to see those

Maria. Whats that?

Indy. The, ah, other things that you have

Maria. Well, ah, what I wrote out was just strictly the thing down here with their address and everything ah, and I think a lot of stuff there is in the house. I went upstairs—he usually keeps, ah, these, ah, attache cases all over the place, and tapes and stuff, okay—everything is gone. He may have come here some time, not, not recently cause he supposed to be up in New York Strike Force.

Indy. Uh, huh

Maria. See whenever he went away, he never left a number where I could reach him

Indy. Yeah

Maria. Now since I found out all of a sudden he called up, I'll be at the Marriott Hotel—that's where he stays at LaGuardia airport

Indy. Yeah, heah that's correct

Maria. Am I right?

Indy. Yeah

Maria. See I didn't even know

Indy. He has a friend Ralph Sorda? who meets him there all the time

Maria. Alright—see I didn't know this ah, now ah, I've got, what I know about—remember Errichetti—well Errichetti came out and said that, ah, in the trial, later in his trial, I don't know if you remembered cause I don't know what it was really about, something about $45,000 he paid

Indy. Uh, huh

Maria. I think it was 45—somewhere between 40 and 50—I think the figure was 45. Alright—now—that almost destroyed Mel—because he never thought he'd come out with it. It's like ah, a, bookie goes into a gambling den and sticks them up. Who are they gonna go to if it's an illegal game.

Indy. That's right

Maria. Okay

Indy. That's right

Maria. Errichetti probably was in so deep he said what the hell's the difference. His nephew made charges, DeLorenzo.

Indy. Uh. huh

Maria. And they were true

Indy: Are they the one about the watches and everything that he got—the microwave oven . . .

Maria. They were all true-now . . .

Indy. Did he bring the microwave home?

Maria. That's right and I . . . up in Long Island—now I didn't know

Indy. Yeah

Maria. Indy—he told me it was some guy owed him a favor and I didn't want it because I'm from the old school . .I cook on the stove I don't want this, all this

Indy. Uh, huh

Maria. And I was, I was really ticked over it, he says I don't know what's wrong with you any other woman would take the damn thing—I says but I don't want it I don't have use for it. Now, how did he get a bill? He bought her one, it's in stewart in their apartment and he went down to J.C. Penney and got a bill and presented that no one pushed it and questioned it.

Indy. Ah well how did he get it—he knew someone in JC Penney or what?

Maria. He bought the microwave for her

Indy. Oh God, yeah

Maria. He's got a duplicte of our place up there

Indy. Yeah

Maria. Ah, ah, you know I know he got the bill? Because he come tear assin home here and I hadda drive him to J.C. Penney at nine in the morning

Indy. Yeah, yeah but he got, but he got that from

Maria. He got, he got the bill, but it's not for the, the, the, ah, GE that was given to him—it was for I don't know . . .

Indy. Oh it was for another one

Maria. Yeah

Indy. What did he do, what did he do with the GE though?

Maria. I got it sittin right here on my counter

Indy. Oh boy

Maria. The watches were given back

Indy. Uh, huh,

Maria. But the ag . . .

Indy. After it was found out, yeah that's right

Maria. Well the, huh?

Indy. After it was found out though . . . you know . . . and the thing is that, ah, that Goode and Amoroso both knew about the watches

Maria. Oh sure they did

Indy. Aware in advance

Maria. Tony was wearin this big, ah, in fact I saw him they came home and they said, ah, well which one do you want . . . they were debating over whose gonna take which and ah, there's a big white gold one, very intricate, very gaudy, ah God it was terrible I didn't know what they were talkin about

INDY. Umm

MARIA. And ah, that was that, they were given back, so it's you know

INDY. Oh God, whatta, whatta, what a thing to go through.

MARIA. Well I'll tell ya something it's a . .a revelation.

INDY. Hows JR reacting to this?

MARIA. JR has been very quiet.

INDY. You should be very careful with him, you should insulate him from this as much as possible. . .

MARIA. Indy. . .Indy. . I wouldn't throw anything. .but he, he. .but he knew all of this. .but ya see Mel never got us together. Mel would send him out of the house when he came home. Hey Mel would only come in. . .Lately Mel's only been coming home. . .once a month . . . once every two weeks. .pop in. Then he said to me, ah, he came in, what was it? a little over a week ago , he said well I have to go up to.a. New York, I'm flying up to New York, I have to see the Strike Force and then I have to go to Washington. .and he bought a car . .a. .a cheap one, just to run around, a dodge aries. .so, a, wake me up early in the morning. and by the way, do my nails tonight, and we were, we were picked, I mean we were so angry with him, JR and I , we knew now already what he was doing! So JR lookin at me and I a. . he started taken out JR . .tookin JR out that Sunday afternoon to the Mall. . .He wanted to buy JR a tape . . see he thinks he can buy ya. .so JR said no he didn't want it . . . .

INDY. He's — He's far more principled than that.

MARIA. Well see I raised JR to be honest and never lie because a liar has short legs—you've gotta get caught. .so ah, JR refused — Mel wouldn't talk to him. .he was furious with him; he came home . . he went up to our bedroom and he sat in the bedroom, Mel. I was here with JR, so I figured, before he takes it out on the kid I'll go in and do his nails. Now in court they were all talkin about his manicures men.

INDY. Yeah.

MARIA. I was the one that used to do his nails.

INDY. Oh boy.

MARIA. yeah . . and a, it's ridiculous . . you know the things he was doing he was actually leading another life and coming home and just, I mean just, bare assed lying to us.

INDY. Completely different world.

MARIA. Completely . . and I mean actually lying and he was telling me everything he was doing but saying it was a Sir Gordon or a friend.

INDY. Yeah.

MARIA. Now, ah, she's not a, ah, a citizen I don't think.

INDY. She's British.

MARIA. She's British.

INDY. She's ah, yeah we don't know if she's become a U.S. citizen do we?

MARIA. I don't know, she hasn't been over here. I guess I don't know, but she had the whole family, Thanksgiving, up at her place there and Mel came home here and he said—well I'll see ya and took off and spent Thanksgiving up there.

INDY. That was last year.

MARIA. Yeah.

INDY. You didn't know about this?

MARIA. No!

Only found out when I found the book. I didn't know any of this. All I knew is when he left he was tellin me he was goin to listen to tapes. Meanwhile when ABSCAM came I was worried sick. When he first got arrested he came home to me—he needed ten thous. .Vince (Jimmi?) was his lawyer yet, his best, and Vince was a nice guy.

INDY. Yeah.

MARIA. Not too bright but a nice guy—and ah, Vince called me and I mean I was sick over it and Vince says, well I need ten thousand bail—so I gave him the deed to my house and I gave him my engagement ring.

INDY. Oh God, yeah.

MARIA. Alright.

INDY. And this is what he is done to you?

MARIA. That's right, right down the line. .I mean I'm just, I'm just shocked that he did it because I mean, you know, I mean, I didn't have a family.

INDY. Well then you were just a plaything for him.

MARIA. He was my, you know, my whole world.

INDY. I know you said you always considered him your best friend, always.

MARIA. Well, you know, I was born with no family, abandoned, I mean, I mean, ah, when I met him he was always very good—he always. .he couldn't do enough for me. A new car and this and that. .when I didn't want. .In fact even when I found out about it he came in here sheepishly. .took us out to lunch. .I didn't want to go but I have to worry about JR too.

INDY. That's right.

MARIA. It's still his son. .so we went out for lunch and while we are sittin there he said do ya know I think I'll buy you a new car. I mean I just looked at him. Doesn't he have any morals . . . no anything . . . I mean I don't want a new ca . . . I don't want anything. I don't need a new ca . . . I. . . .

INDY. Is this just to make up for having been away a long time and not letting you . . . and that what he was trying to do . . .

MARIA. He . . . he was still tryin to con me that there's nothin with this Evelyn. Meanwhile he's got . . . a, it's in their name. Everythings in their name. He gets all his mail up there. The banking is done up there. And he just comes home here . . . and then he turned around to me and he said, you know I'll always take care of you and JR, after all what are you worrying about you'll have grandchildren. I mean but what about my life.

INDY. Yeah that's right.

MARIA. I mean, but just, just cold and calculating and walked out.

INDY. But, but where is she living now?

MARIA. Oh I got the home address, you gotta be kidding. I was amazed and you know how I found it Indy?

INDY. No.

MARIA. Ah, that's in all in that thing.

INDY. Oh I wish I, I wish I had gotten those papers but you know I . . .

MARIA. Is there anyway you can check on it?

INDY. Well I'd better call the syndicate and tell them that it's some important papers . . .

MARIA. It's in a brown manilla, large manilla envelope, and it's made out to United Features Syndicate, 200 Park Avenue and I'm pretty sure I had the right address and I put on the bottom; Attention Jack Anderson, Columnist and your name below it.

INDY. It should reach me but it might take two or three days to get to New York and then maybe a couple of days from there.

MARIA. Well, ah, I'll tell you Indy, I don't wanna hold you on the line of course. . .

INDY. No, no, not at all . . . I . . .you know because this, this game is a . . .

MARIA. Hold on one second Indy. . . just a second.

INDY. Sure, sure, sure.

SIDE II TAPE I

MARIA. And that's when it all happened. . . it was about. . . went to jail. . .was about two years old. . .he'd always go to bayside and this and that. . .

INDY. (Inaudible) go to jail when he was like 5 days old

MARIA. He was 5 days old. . .yeah but he was two years old at this time. I'd already had him two years. . .you follow me. . . and a, I started getting an inkling . . .you know you can sort of sense when somethings not, you know. . .just so-so. . .and a, didn't say anything. . .and then I noticed he started staying away awhile, and then, I found something with the name Evelyn Weinberg at the time and I tried to check it at an apartment house in Bayside but they wouldn't get. . .they had security there and then I just forgot about it. . .really. . .just forgot it, anyway when all the ABSCAM and all that stuff came up, you know with Mel bein arrested I saw her name in the paper and I asked him and he says no, it's just, a, she's an actress and we only used her.

INDY. Uh, huh

MARIA. But I saw the agent Jack McCarthy who came to the house.

INDY. Uh, huh.

MARIA. And Jack wanted me to pick out pictures of Mel in the pictures . . . and I saw this woman sitting there and I asked him and he wouldn't answer me.

INDY. Why did he want for you to pick out a picture of Mel?

MARIA. Ah, Well, when they first came to the house evidently Mel had just been picked up. I didn't know about it and I get a knock on the door and ah, Jack was at the door and ah, I invited him in.

INDY. Oh that's the first time you ever met McCarthy?

MARIA. That's right, I invited him in and he said I'm from the FBI and I said, well, can I help ya? And he said ah, yes, he said ah, sorry but he say— ah, would you pick out some pictures for me . . . so I brought him into the living room . . . ah, ah, into the kitchen and I said you know, Do you want something to drink and that and ah, he had a picture of Morris Schenker and a few other people in Vegas and Evelyn's sittin in the middle in a white gown and her mother is next to her . . . okay?

INDY: Umm.

MARIA: So he wanted me to pick out Mel, I said well that's Mel there and he said thank you and I said, well, whose the woman sitting here and he wouldn't answer me . . . and they left. Then's when I get a call from the Attorney, ah,a, he needs bail . . .

INDY. That's Cuiti.

MARIA. That's Vince Cuiti.

INDY. Yeah.

MARIA. And then I met them down at Orlando's that night . . see I used to go to Orlando's and we'd go out to dinner . . . take JR with us . . . you know I'd go early and then come home cause I never left JR with a sitter . . . and ah, like I saw Bowie Walsh . . . I know all of them, but you know, like, I'm the wife I just sat there and never said anything . . .

INDY. Whose Walt?

MARIA. Bo Walsh that's the sewer district, that's that big thing up in New York.

INDY. Oh yeah, okay.

MARIA. The . . .

INDY. Oh yeah, yeah, I know what you mean the, a, the, the case the big thing up in New York, yeah sure.

MARIA. I know the lawyer that was with Vince supposedly up at Cherry Hill, I mean I heard all this because they used to talk on the phone in the house, all of, you know they'd be taping the calls in the house . . . so you know you couldn't miss.

INDY. Absolutely, yeah.

MARIA. So ah, you know, a, then they, finally they opened the office around the corner in the bank in the Hauppaugge office of the FBI.

Indy. That's right.

Maria. They were right around the corner from us. See now all of a sudden Mel's says we're gonna move down to Florida. Alright we come down here. He'd already picked this place out, see I didn't know about it and ah, until it was ready, it was ready in about two weeks, we stayed at the Jupiter Hilton, that was at that time, and ah, we move in, and then one day he comes home, he says, oh I met a (inaudible) I'm gonna invest in a place. He says—just like this—Miles Grant. I say that's great. He says, well I wanted to ask you first if ut's a good idea. I said, well, I said if you have any extra money—I never asked him what he had.

Indy. Sure.

Maria. So he says, well, I'm gonna take ya up there . . . Takes me up in the car. There just breaking ground right. But as we go in there's a big fixture infront. There's these big ah, a, amber lights, fixtures beautiful you know but there's no buildings . . . there just breaking ground. . . . So he said, this is Miles Grant it's a big development. It wasn't Miles Grant . . . Miles Grant is across the street it's River Pine . . . so we drive in, I can't see anything, he said, well I wanted to get near the water but they want to much money . . . anyway come home . . . next thing I hear the place is built. Tell me, he says, what do ya think I've got a union official, a trucking official and his wife are gonna lease it from me this way I don't have to make the mortgage payment and if I decide to sell it he's gonna buy it.

Indy. Ya and you get depreciation and that kinda stuff

Maria. Okay—fine—now I'd never seen the place I've only seen it when the ground was broken. He's comin home tel . . . Now he comes home, he says, can I have a sample of your wallpaper? I says, my wall paper what for? He says, well this guys wife is a real dunce and she can't decorate nothin . . . she's driven the guy crazy. He's talkin about himself.

Indy. Yeah.

Maria. So I go into my laundry room here and I take out, I always keep a little piece. He took . . . next thing he wants is the type I have in the bathroom. Next thing he's got lifestyle furniture. . . . Is down the road from me on U.S. 1, ah, a guy from Jersey opened a place here and got friendly with Mel. So Mel evidently tried to buy furniture up there in Stewart and didn't see anything he liked, and he comes down to Life's. Life's goes up there and measure's the place, and a, er, when Life went up he saw a lot of agents around. Guns on the table evidently—she wasn't moved in yet—or she was working—see she worked up there. So during the day.

Indy. So he bought all this for her?

Maria. Sure, he had duplicate he bought another condo, he was setting up another life another words he's got . . . if you read People magazine they wanted to interview her, nobody could find her, he protected her like mad. He changed her name in the book.

Indy. Called her Diane that's right.

Maria. Lady Diane—that was Evelyn Knight! Her name evidently is Evelyn Knight.

Indy. How did you find out all this now?

Maria. Now wait, remember he took me up to the ground breaking right? Now all this time he's comin home, I mean daily tellin me about this woman is an idiot she can't do this, then we had a leak in the living room, ah, something from the pipes, and they put your screen room on, now the condo is after them to take off the spotlight, they put a spotlight up on the gate these people . . Then a ya know I'm getting a little tired of hearing this, and ah, next thing I know I get a telephone call. Life comes over, his name is Life Neandros? and he, he calls his store Lifestyle

Indy. Umm.

Maria. He's got a boat he calls it lifeboat, you know he uses the name Life comes over to the house here. Life did a couple of drapes here for me, there little . . there level ones, you know down on the windows.

Indy. Umm, huh.

Maria. And Life tells me, uhm you know Mel told me I could come over and measure up your wall unit . . I didn't get it from life, I got it from another furniture store . . . so ahm, cause there's not much storage space in here so I use that . . and I said what do you mean measure it up? He says, ah, well, Mel wants it for this guy up in Stewart. I said alright, so there all in here, Mel came in and their measuring it up. He had Life try to make a duplicate of my wall unit. Okay?

Indy. This, er, the store right?

Maria. Yeah, Life is the owner . . . now time is goinby right . . all this ABSCAM is goin on, ah, you know I met the mayor.

Indy. Uh, uhm, Errichetti?

Maria. Ah, when I was living in Long Island, Mel came, uh, Mel picked, what was that (place) up in Huntington, I don't know if Errichetti was driven up by his nephew or Mel picked him up and drove him there . . They would meet at the Chinese restaurant in Huntington . . on Jericho Turnpike . . and I don't know what the reason I was down there, I had my car to mark . . it was a cartier at the time, and ah, I drove in and Mel, when I got out of the car, he said, oh, this is my sister-in-law, he introduced me as his sister-in-law.

Indy. He introduced Evelyn as his sister-in-law.

Maria. Yeah.

Indy. And didn't you wonder what he was doing?

Maria. Of course I did but I didn't say anything, you know, what if, ah, er, ah, you know I don't know I'm just in the middle so I just listened and ah, the two of them said something. I don't think we had dinner that night . . . Mel got in the car with me and we drove home . . . so but there was a strict reason why he met Errichetti there, and Errichetti must remember it, because that precipitates something that happened at a Holiday Inn . . . which Mel got out of . . . Tony Amoroso was supposed to be watching him.

Indy. Uh, uhm.

Maria. And he ducked Tony . . . and it was split second timing on something. He met Errichetti at a Holiday Inn, and if you can geta hold of Ec, Errichetti, ask him that because I know because I drove Mel to that Holiday Inn but I don't know which one it was, it was on the Long Island Expressway, and it was built down into a, ah, like a hollow, off the road, I don't know, somewhere between maybe four.

Indy. So this was a secret meeting he had with Errichetti without Tony ever knowing about it?

Maria. Right—he skunked them alot.

Indy. Yeah.

Maria. Now, ah, getting back to here, I wouldn't know anything right? Mel comes home this is about a month and a half ago; this is where everything started walks in the house and he says to me come on I'll take you out to lunch, I says, oh alright, we went to a little dumpy restaurant over here alright? on the way he says oh, I have to stop in and see Life's a minute, and we go in and Mel sits in a chair and I'm standing up and Life there working at his books, and Life turns around and hands me a pink invoice, and says here put it away, and I take it, with that Mel must a realized it was for furniture that he bought for Evelyn, her names on it . . . so he said to like get it from her and the two of them came at me, I swear, Isa..I told um I said your hurtin my arm what do ya want this for? The the bells started to click..little things going together, okay?

Indy. Uh, umn, So you saw the name.

Maria. No! I didn't have my reading glasses..so I asked Mel about it when we got outside, he said oh that's just for tax purposes, don't woory about it, I asked him again, I figure I'm gonna book on something..anyway a couple of days later he says to me ' Look I want you to take the car and drop me off at the (scenic) gas station up on US 1 here' a block from me. I says why I'm takin ya to the airport. He said ' no I have agents picking me up ' and a.

Indy. Oh this is was in Florida now.

Maria. Yeah it was in Florida.

Indy. Oh this is when all the trials have a, started and ABSCAM is more or less over now.

Maria. That's right, that's right, but, a, this, I only found out all of this stuff, but, ah, and sure enough who picks him up? Evelyn.

Indy. Oh Jesus.

Maria. He, a, when he left here, he a, last week, he says, wake me up early; I wake him up early, he says a, well I got my car I'm goin straight, I'm gonna leave my car at the airport it'll be alright, and a, he says, ah, I gotta fly to New York and Washington I don't know exactly when I'll be back. I said okay—cause I never questioned him, where he was going, or what, NEVER, ah, P.S. he leaves—now I'm bothered, this is bothering me right? I take a ride up there—there's his car parked. They went off in the Cadillac, he must've driven up to New York in the Cadillac.

Indy. Uh, uhm.

Maria. With the Cadillac the two of them are still gone—Now how I found the place, when they pulled away that invoice on me, and they made such a production, you wouldn't do that if you just, if it was something innocent.

Indy. That's right.

Maria. So thats what set me.

Indy. Obviously her name, the name was on it yeah.

Maria. It hadda be and he didn't want me to see it. Same thing as the boat. He didn't want, every time my neighbor next door would come by, she works during the day, I don't see her, and if she says hello, you know what he says to me? She's an SOB, she's this, she's that; and I'd say, Mel, you don't even know her. Stay away from her, she's no good, and I looked at him and I didn't put two and two together; he sold the boat. I asked her the other day for a, ah, whose name was on it, and she didn't wanna tell me, she told me Evelyn Weinberg, and she said I'll give you a copy of the notorized statement. I said, thank you, she gave me a copy.

Indy. Now which boat is this?

Maria. This is the UP YOURS, the twenty footer.

Indy. Yeah, who, how did he buy that?

Maria. Ah, that's, I think she bought it.

Indy. Yeah.

Maria. Now he coulda sold it and she don't even know about it . . I think the name was forged on it, personally.

Indy. Where did she get the money from?

Maria. Evidently she worked up there for her, I. . . .

Indy. Why didn't he ask her for the bail money, why did he come and ask you to dip into your savings?

Maria. Ahhh, she didn't have any money, evidently at the time, she was running around with him. Do you follow me?

Indy. Yeah, yeah.

Maria. But when he came down here, evidently her brother or relation owns some kind of condo. I don't know and she works there and she was getting a lot of money. They kept comin home and sayin this girl—she works so hard—she makes reservations on the condo and that, and ah, she wants more money and they won't give it to her so she quit. And then all of a sudden I find out she isn't working.

(Neighbor interrupts.)

Maria. Halloween—Mel came home and he said to me, ah, listen I have to go up to Jacksonville, that was a Saturday, October the 31st, I have to go to Jacksonville do you mind if I take JR WITH ME? I said of course, you know he's away so much, gee anytime you get a chance.

Indy. Yes, yes, to be with your son.

Maria. Now, I, now this has been goin on for years. I always thought he and JR were goin away together.

Indy. Uh, Uhm.

Maria. So they leave right? He said I'll be back Monday morning which would be November 2nd. Ah, I'm sittin here and that night I'm thinkin to myself Lifestyle pulled that invoice away from me. He's always talkin about this place in Miles Grant. He copied everything as far as I know from my place. So I get in the car, 12:30 that night. JR's not here, I'm by myself again and I ride up and I go into Fort Pierce, I passed it, it's only 16 miles from the house straight on US 1. I drive up; nothin; so I come I figured, oh, you know, I must be imagining it. And sometimes ignorance is bliss. Come in . . Sunday morning I wake up . . and it is really bothering me.

Indy. Yeah.

Maria. I get in the car and I drive up US 1, I only have to go down to my corner here and make a left. Straight up and I see a huge sign 'Miles Grant' with an arrow. I couldn't see it that night.

Indy. So that's where he was building the apartment, yeah.

Maria. Thats—uhm, on the right hand side, Miles Grant is a huge homes development, the other development is the same as mine only bigger and ah, I drive up, I don't know the name of the place. I drive up and what do I see—it's pouring rain meanwhile—it's pouring rain and I see these fixtures. And I make a right turn, I pull in, now all I have to look for . . cause he's been tellin me all along . . describing the place. You know because he's rented it out to a Union official.

Indy. That's right yeah.

Marie. So I drive in the wrong way I go left and I drive around a circle and I have to look for a house with a, in the patio, the court yard, a screened in room inside, I have to look for a yellow spotlight which he told me about right? I don't see anything, there maybe one house there with one. So I'm riding around the circle and on the circle coming out, meanwhile it's pouring right . . sometimes they say maybe there's a God looking out or it's fate, or I don't know. As I'm driving out and I'm not lying Indy, the sun comes shooting out between the clouds, the rain stops and I turned because it hit me in the eye, it wasn't the sun it was hitting off the spotlight.

Indy. Yeah.

Marie. The house, his unit, is built inside, you have to drive in court 2, you drive in and there's parking in there, and there's four units to a building . . in which four families live . . like in my unit here.

Indy. Yeah.

Marie. I drive in and sure enough there's.

Indy. The car.

Marie. Nope, nope, wait there's a Cadillac parked there, a four door Cadillac, I've never seen it before, okay? . . I just heard about it. I drive in and there's the yellow spotlight and there's a security camera sitting on top of this fence. With the television thing . . that's the one he wanted when he came down here, originally to put on mine, I said, what do I want a camera for, if anyone's at the gate I will come out and talk to them . . . I don't have anything to hide. Right?

Indy. that's right.

Maria. So he put it up there, ah, as I'm parking Mel was inside all the time, I didn't know it. Mel's car, JR, he sent out to have it gassed up. They were there . . . I thought they were in Jacksonville and here I found the place. I pick up the vines, there's vines covering the names, cause all the places have a name. There's WEINBERG . . . there's the house number, the parking number, I, and the gate was left open, when JR went out, see I came right in between all of this . . . when JR left for Gassing, I passed him on the road; He couldn't understand it . . so he just kept on going.

Indy. Yeah, but do you mean that he'd bring JR to this house?

Maria. AH, wait, now I'll tell ya what he pulled then. I was wondering how he did that. This is what hurt me more than. . see I didn't know yet I, ah, looked down and the dead bolt was open on the gate, so I opened that, opened the screen door walked in (inaudible) . . . .on the kitchen floor . . . so I knock on the door . . I figure I came this far; OUT SHE COMES; and I said Evelyn? and she said no it's Eve, I said I'm Marie Weinberg Mels wife . . she says, oh, just like that . . I mean I'll never forget it.

Indy. So this is last Thanksgiving then?

Marie. NO! This is just this Halloween

Indy. Oh this Halloween you talking about, I'm sorry.

Marie. He's already been up there.

Indy. Yeah right. . . this was the Saturday, this was that Saturday.

Marie. Thats right October 31st . . uh, the next day November 1st, the next day November 1st, this was November 1st, October 31st I was lookin for the place I couldn't find it . . . it was at night, that's when he left with JR. .he told me he was going to Jacksonville.

Indy. Uh,uhm.

Marie. See? But they went to Jacksonville and came back that Saturday night; they were there all the time, JR went out to Gas the car, by the time I pulled in Mel was inside upstairs didn't come down. So I didn't know they were there—I figured they were in Jacksonville.

Indy. Yeah, Was Mel there when you walked in?

Marie. He was sitting upstairs on the phone.

Indy. He wouldn't come down?

Marie. No! and I didn't know he was there.

Indy. Oh God.

Marie. So she comes out in the courtyard and she says ah, she's walkin towards the gate and I said ah, she said can I help you? I said no, I just wanted to confirm what I been suspicious of, she says, oh, well I wouldn't get upset, so help me God, I says, I says look I'm not upset, I says look I'm not upset, and I did everything I could to control myself. I said I'm not upset, I said, but ah, I've just ah, you know, I heard about you and that and I said ah. She goes; Is there anything you want to tell Mel? I said no; You tell him anything you want, so ah.

SIDE III CONVERSATION WITH MARIE WEINBERG

Marie. v . . number 233 and there's all vines growing over the fence.

Indy. It's, it's Court two.

Marie. Court two, well ye have.

Indy. River Pines development Court two.

Marie. You go into River Pines and you bear right at the stop sign. ..nd you drive around. .and the first sign is Court One and then there's Court Two. .you pull in Court Two and you go to your left and you go down into the parking area. .and there's their little building on the left.

Indy. What do they have an apartment number or something?

Marie. Yeah, the, er, the building number is 5782, ah, parking space number 233.

Indy. Okay, that's what marks off the apartment I guess, the parking space.

Marie. Yeah, and then there's vines with orange flowers on it,. .over the fence, and if you pick up by the gate, on the right side of the gate, there's a sign WEINBERG, his name. That's when I, al. .my heart stopped when I saw that cause he's telling me a trucking official.

Indy. I did hear from a number of people, I told you the last time we talked that I did hear, that a, that a, some of the agents knew about, that they'd been secretly married. .of course I couldn't confirm. . .

Marie. Oh I believe that but he's still married to me.

Indy. Well then he's a bigamist.

Marie. Of course! I mean that wouldn't stop him, that doesn't surprise me. . .doesn't surprise me I figured he was one. .because he kept sayin to me to wait three months. . .I didn't know why. .I told him I wanted a divorce. I said it's ridiculous, I don't wanna live like that, and evidently you must love her because your up there all the time . .you only come here once and a while. .and your carrying on up there. .eventually I would have had to find out. .he says we'll wait three months. . . . I don't know why this three months unless he planned on going somewhere or ah,

Indy. Yeah because the last time we talked and you kept saying that you know three months.

Marie. He said wait three months, now I don't know what he's waitin for, the book to be signed, he didn't want any notoriety or maybe there's ah, a time period on something but I know he got photo pictures taken for his passport. He said he might have to go to England to do a, ah, documentary.

Indy. Umm.

Marie. He wanted JR's and his, now her family lives there and he had them all over here last year, he's takin them around in the van he had. .and ah, ah,. .you know. .what could I tell ya. . an there down as Mr. and Mrs. Evelyn Weinberg.

Indy. Oh, that's incredible, so he gave all that furniture away to all these agents huh?

Marie. Oh well the agents came and.

Indy. And it was your furniture?

Marie. Yea. .yeah, but ya see it wouldn't have fit down here anyway. He said don't worry and he says whatever I—can get for it well, I'll buy you furniture down here.

Indy. uh, uhm . . you mean Goode and Amoroso and, and and a they took the furniture?

Marie. Ah Tony took ah, my bedroom set.

Indy. Yeah.

Marie. Tony took and ah, my sons room, . . and John took, oh God, I mean I had a lot of furniture it . . it was a ten room house . . you know . . I had beautiful living room stuff . . crystall little things . . I mean it was a pretty ho . . I mean you know it was nice . . but ah, they took it . . and ah, when I came down here I, I needed very little because it's only a living room, dining room. . .

Indy. It's a small space right.

Marie. Oh sure, it's just two bedrooms and ah, didn't need it so I guess the money he got for the furniture there he bought my furniture here.

Indy. Oh he sold it to them you mean. . .

Marie. Sure.

Indy. He didn't just donate it . .

Marie. Oh yeah well a lot of stuff they took anyway . . .

Indy. Yeah.

Marie. You know . . but ah, . . so that's it there at ah, . . . I even have the phone there . . you see Florida doesn't have 24 hour answering service . . . and I even found the number layin on a piece a paper here. So I got the phone number and during the day it's an answering service . . . and I ca, I ca, I tried it one night at 11:30 and he answered the phone.

Indy. What's that number?

Marie. 305-286-4826 and ah, he, when he heard my voice, he says, what do you want? evidently she was next to him, see I didn't know about the place yet, I didn't see it yet, I had only called the number. . . . So he figured it was an answering service . . . he got me off and then he could tell me any story about an office he had . . . and now he's goin into the detective business. He's got cards printed up; ABSCAM Inc.

Indy. Who he does that . . . thats a farce.

Marie. Oh no it's not, you know he's got, Bob Greene wrote a letter of recommendation . . . John Goode wrote a glowing record, now if he's married to her which I believe that's bigamy, he wants a, he wants a license for a gun and he's a having a ball . . . and the lawyer he's using, evidently he's promised this lawyer anything, very persuasive, and the funny thing is, you see, that's why he got angry with JR, he took JR that Sunday out and told him—c'mon I'll buy ya a tape figuring that's all he had to do. JR for a tape. JR said no, and he kept insisting and asked well, what do you want and JR wouldn't tell him, and then he wanted to know what he wanted for Christmas and he can't deal with that . . . everyone has a price . . . and ah, he came home and he was furious and JR went in his room . . . and JR knew what was going on, JR's not stupid. In fact JR had more brains than I have.

Indy. You can't buy that kid . . . he's been brought up right.

Marie. And ah, I said look JR, I said I'm gonna go in, I says I can't . . . He's gonna leave anyway he's goin to New York, he's takin the car . . . he's parkin it at the airport right? . . . And I said don't worry . . anything we'll get him in a good mood, just for the time being otherwise he's gonna take it out on you. So I did his nails and just tried to ignore what had happened. He wouldn't talk to me about it or anything, and that was it. He left the next morning, when I took a ride up to this condo here . . it's exactly 16 miles from the house, from my house.

Indy. What was he trying to bribe him not to do, basically not to reveal anything about ah?

Marie. No not so much that, you see when I told him, remember when I caught them up there, I caught . . I went up and I found her, well they hadda walk on Monday morning, he hadda come back Monday, cause he told me he was coming back from Jacksonville, so he took his sweet time and the two of them walked in, he sent JR out, never get your marks together.

Indy. Yeah, yeah, sure.

Marie. Because the day that they were leaving on Halloween for Jacksonville, he came over to me and I asked him again about Lifestyle's bill, I kept harping on that . . . it's not like me but it bothered me so, and just kept harping, I figured maybe I'd catch him off edge. He turned around and sent JR out . . and ah, he turned around to me, put his arms around me, kissed me and he said to me, Marie, let me tell you something. He said I love you, only you, there is no Evelyn and there is no condo . . and he went out, and thats why that night, Halloween night is when I went lookin for the place and I couldn't find it . . and the next morning Sunday is when I took another ride up in the day time and I said there's gotta be because he said there's no Evelyn . . who'd he get arrested with. Who was that in the book, he told me in the book, when I asked, whose this lady Evelyn, Bob Greene made that up to sell the book.

Indy. Yeah, Lady Diana

Marie. I could a caught, I said who were you arrested with, he said no that was an actress. That had nothing to do with it. So he just kept, I mean what am I gonna do . .

Indy. And then there were these crazy friends who say it was a dumb wife . . except it was himself

Marie. It was himself, he had this guy who was a trucking official leasing the place, an elderly man and his wife and they got so much money and they don't know what to do and she doesn't know how to decorate so would you mind and then I got a little annoyed when he came down here . . I said gee what are you copying everything I did? and he did . . and then he came home and he said to me why don't you do the patio outisde and will tile it. I said I don't wanna tile it, I said ah, you know I like to wash it down fresh in the morning and he says well the condo here will not let us, allow a screen room, inside the fence. His they will evidently . . but I said no I don't want it—he got a little annoyed with me. He said it looks nice. It's the same thing he's got. He put one in up there so he wanted one here. I mean to me it's sick isn't it? I—I, you know I don't know what to make . . I never heard of this before.

Indy. Nor have I frankly . .

Marie. But my eyes have woken . . . I mean I can't believe that I was duped this more. . I fact I knew something was going on but I could never put my finger on it. .

Indy. Now you've got it all

Marie. And I found in my desk here for the length of a (side) she had it was Evelyn Weinberg in her name.

Indy. Yeah

Marie. And when I asked him about it he said no, no, he said that's not not true at all we just use that name. That names just bein used. And I didn't think anything of it. Maybe you just don't wanna know. I try to say well maybe it will just go away . . you know . . but then it got to a point . . but then he brings the car down to me last year and it's a hot day outside and he says do me a favor? Ah Sir Gordon he doesn't know how to take . . he told me it was Sir Gordon's car . . that's what it was . . He said ah, the car is a mess, he said do me a favor?

Indy. Clean it

Marie. Fix it up, I mean I take care of my car . . you know I don't mind goin out and waxing it . . and I did a number on this car . . I did the top . . it looked brand new . . ah, he came home and he said look Gordon wants you to have $50 . . . I says I don't want anything for it, I said I did it for you, you wanna, you know so ah, he said no, no take it . . I took the $0 . . and I put it inside and then I went out and I used it in the market. Okay?

Indy. Uh, Uhm

Marie. Now the car goes up there. He traded it in for a four door Cadillac.

Indy. Cadillac . . Is what you found out there.

Marie. So she drives a baby blue and he drives a Dodge Aries.

Well he's hard on a car he just wants something to run around in. He don't need it caure he parked there. Now when he was supposed to bring the car Monday when he left to the airport . . he walked out . . he took his little luggage with his . . and he says, well a, I'm leavin the car at the airport. He left . . that night I went up there . . there was his car parked in front of there place. Drove up picked her up in the Cadillac and they took off to New York they drove up.

Indy. That's amazing

Marie. And what he used to do is cash in the airlines tickets. The government paid for them right?

Indy. Yeah

Marie. Go take his car up or go ahhh

Indy. Oh he'd cash in the airlines tickets the government paid for and take the money.

Marie. He'd get First class and cash them in or go second class.

Indy. Did he bable about this to you?

Marie. Oh sure, I mean you know he's ah, big mouth . . . and when all this came on Mike Wallace's show right . . . He was sittin up in Stewart watchin it . . .

Indy. He was doin what?

Marie. He was sittin up in Stewart in his Condo. .

Indy. Yeah, yeah, oh did that come up on Wallace's show about his cashing in the tickets?

Marie. Oh no, no . . . nobody knows that, that his little . . . you know it's petty . . petty stuff.

Indy. Yeah, yeah

Marie. But it's all these things it's just ah, God knows what else he did that nobody knows about . . . I don't know but I'll tell ya one thing . . . I cannot believe it . . . and ah, I'm surprised when I talked to him the other night. He pulled through . . I was talking to Bob . . and the operator cut in said it's an emergency call . . see I had put a call for him at his Hotel . . . cause I just had had it . . I was so furious . . the more I thought about the way he walked in here . . and just said to me, you know when I told him about Evelyn I know all about it . . He said well you know I was the biggest liar. I've always been the biggest liar in the world. I said but no why would you hurt us . . We never hurt you . . and we didn't do anything to you . . I mean you know I said I'm the one that sat and worried when you got in trouble. I worried all through the ABSCAM thing I didn't know what was goin on . . I said you know—He couldn't care—he just walked out the door.

Indy. Marie, tell me one thing I've always wondered about, and, a, did they really have a hit list in ABSCAM of certain politicians that they wanted to go after?

Marie. No, I really, no, Indy let me tell you something. One thing he did say was true. It was an accident.

Indy. Uh, uhm

Marie. Ah, you see Rosenberg? . . Rosenberg . . Mel used to meet Rosenberg at the Blue Dawn diner . . . that was right up the street from our house in Long Island . . . We were on Split Cedar Drive, Veterans Highway . . .

Indy. You see the reason I tell you this is because Silvestri has been talkin to me.. to you know Joe? You've heard of him?

Marie. I've heard o— him but I've never met him.

Indy. Okay, He and I are pretty good friends and I

Marie. I heard Mel Talkin to him on the phone a lot...

Indy. Oh they were very good friends I mean ah, Silvestri's told me that he and Mel used to go out in Atlantic City and pick up girls.

Marie. Oh probably, ah, hey look I didn't say mel was an angel. I can see any man going away...hey, Mel...hey I know the agents. Tony's got girls living all over the place..He had one living practically next door to him, practically next door to him. Where he moved his wife, I mean there no angels. What do ya think they were using that boat for down there.

Indy. Yeah, a lot of pint...did that boat catch fire or something?

Marie. Yes, ah, there was electrical work, in fact Mel was looking for Tony next thing they find out, the boat burned down. Now they hadda get it fixed right?

Indy. yeah

Marie. So Mel called up Errichetti and they made some bullshit story—Mel took care of that...they footed it..they footed the bill to fix it.

Indy. Oh they did?

Marie. Sure they did...he had them bringing in champagne for the Arabs, I saw the boat, Mel hadda go and meet Tony. He hadda see Tony for somethin and he drove down there. Tony wasn't there. But some guy Red or sonethin Dick? or Red was told to take care of the boat. They guy was out somewhere. nobody was on the boat. That thing was full of equipment and everything. The first time I'd ever seen it.

Indy. Oh you, you saw it from the outside though?

Marie. Oh yeah, I didn't go into it, and a a in fact I looked at the slip where it was and I said my God no one in their right mind. . . .

And who the heck knows what happened.

Indy. But ah, how did you know that Tony and a the other guy John used to bring their girlfriends there . . Mel told you about that.

Marie. Of Course! Are you kidding he couldn't wait to talk . . .

Indy. He's got a lot on them too I think

Marie. Ohhhhh (laugh da da da-di da).

Indy. He probably could blackmail them for the rest of his life

Marie. Do you know ah, do you know I used to go to A & S shopping, Smithhaven Mall, if I need, I go in there and anyway I got to know, I don't know I bought a make up one morn . . I don't know. I'm not a big buyer for myself but I, if I a have nothing to do I just walk around and I met this woman she's in the cosmetic department, and I couldn't get over her skin, and we got to talkin, every time I come by I'd say hello to her, she told me she had cancer, and they were giving her a quart of (inaudible) that's why her skin was so beautiful. And then she introduced me to this blond woman, and this woman was in charge of ah . . . Jamai Monte make up or something, and a anyway I came home and I was telling Mel, and Mel says oh that's John Goode's wife—she works in the cosmetic department. You met John's wife I says well I don't remember which one. There were two blonds. He says ah he can't stand her she's always bitchin or something, she's german or something, a foreigner, so he's got this girlfriend and he goes down to Florida, and a evidently Mel ts a place for them to stay or John I don't know they have some place down in Del Rey, they always have a place to stay . . Hotels and that You know they all go over to Singer Island, to the Hilton over in Singer Island, the Holiday In or whatever it . . .

Indy. Yeah.

Marie. Yeah that's a big hangout, now we're supposed to have agents here watching right? . . Never had agents here.

Indy. Yeah, yeah, exactly

Marie. In fact Bruce Brady was supposed to be . . the newspapers came around. I was in the house.

Indy. Oh yeah Bruce was there when they forged that letter . . Errichetti forged the letter for Senator Williams . . that was Bruce Brady was right there . .

Marie. I don't know . . that I don't know about . . I heard something about a letter

Indy. Oh I've confirmed that that's no

Marie. I don't know but meanwhile John sent Bruce down here right? Bruce took off with some girl in Denver, I think it was, when he was supposed to be here and Mel covered up for him.

Indy. How did he cover up for him what did he do?

Marie. Because Bruce met a girl, he knew her in college or something, he got in touch with her, anyway he had a good chance of, evidently Bruce had just gotten a divorce or he's separating from his wife. Okay, so he comes down here and he says to Mel something about. .he's got a hot weekend. .and ah I guess he wanted Mel to You know . . . hey John was away. .supposedly away on vacation. .so nobody would know about it right. .he could take a plane and I said Bruce what do ya wanna go there for it's snowin. .

Indy. Uh, Uhm

Marie. I remember that the snow. It's cold weather and it's beautiful here. Na nobody will know so he took off. .and he came back then you know after. .

Indy. So when when the others would ask ah, Mel if Bruce was there watchin him or whatever. .he would say oh yeah he was here

Marie. John called here. .for Bruce or somethin, and ah, Mel said he went out. .just. .He's out. .you know. .I'm alright. .he's out and covered it. See?

Indy. Yeah

Marie. I'm in the house here I don't know it and Leslie Matiland is here banging on my gate. .okay.. .and ah, I call up the West Palm Beach office. .because I know JR's coming home and I didn't want. .and I didn't want to a have him know it. .this when all ABSCAM was breaking. .and ah, one of the kids grabbed JR and took him down to his house. .course JR didn't know what was going on. .I've got Leslie hangin outside. .Leslie. .called my neighbor in the back. .he's away six months of the year. .from Michigan, and I don't know how she got his number, but she got it. .she told him that she was a relation of mine and she couldn't get me. .and he gave her my phone number. So they went across the street in the park and they had telephoto lenses. .and ah, I called up the West Palm Beach office.

Marie. I think, what was his name, Gene something, was in charge of West Palm Beach, Gene McKinnon,

Indy. Yeah, McKinnon

Marie. Is that the name? Ok, and Gene called up and said there was something he could do. So, I was stuck in the house here, and I just told her, I said I couldn't speak to her, and then one of the agents, called up the Times and they said, they'd take her out for lunch, they didn't want Abscam breaking then. Must have been just before it broke.

Indy. February 1980 was when it,

Marie. Yeah, see, I can't give you all the dates on that, all I can, judging when I came down here. I've been down here two years this past July. Exactly two years, so from July to now, that's another six months. That's two and a half years. Meanwhile Mel was up Bayside with this Evelyn, from the time that that happened, he had her in an apartment building up there, had her up in Jersey and I found the lease agreement with his name and her name on it. Evelyn Weinberg and they use a Jensen Beach Post Office up here, all their mail goes to Jensen Beach, Mel's mail goes there. PO Box 1221, that's where they get the mail.

Indy. Jensen Beach Post Office, right here

Marie. Jensen Beach Post Office box 1221, that's the post office they use

Indy. That's in Florida, right?

Marie. No, no, Jensen Beach,

Indy. What's the county?

Marie. That's Martin county. See my block, I'm at the very end of Palm Beach county. Once I go out here and make a left on US 1, I'm on Martin County line, and it goes up into their county—and they're just 16, not even 16 miles, about 14 miles up the road, you make a right, it's about 2 miles to their front door. So it's sixteen miles to their place.

Indy. Well, I tell ya, I don't think you should be protecting him anymore.

Marie. Uh, I don't know that, all I know is that—you remember Andy Communications came here an (they put in the tape system, he wanted an answering service, ok? And funny thing I even kept their address, their phone number, yeah, John Jaysec was the salesman, ok? and they put the system in here and they kept that in here until they opened an office somewhere, where it was I don't know, they were taking calls somewhere down in Del Ray, wherever, that I never knew, Mel never mentioned that, they were always in an office somewhere, what I think happened is, they were up in Stewart too, they had a trailer up there, all the agents were up there and that's where they really started, they were passing around, money around stuff, and Mel's good friend, on the paper up there, the Stewart Courier, I think, is Steve Tinney, and all the leaks he was giving to Steve, so Steve could (inaudible) Jim McGee from Miami Herald, he delivered to him a suitcase you wouldn't believe, you couldn't lift it, and met him at the Ramada Inn in West Palm Beach, that's where they used to hang out.

Indy. You know when the Justice Dept. was investigating these leaks, did they come to talk to Mel? or what?

Marie. Oh sure, we had two guys here, they sent two special agents,

Marie. And Mel was as cool as could be, and they were sharp guys let me tell ya, they weren't no fools.

Indy. He just said he didn't know anything about anything, right?

Marie. Well, I guess, uh, I guess, uh, you know, he had an answer for everything. You know he your not gonna, he, a. like they said in court, they had top attorneys, those attorneys said that they were gonna kil him, but nobody pushed far enough and they asked him the wrong questions, cause Mels got a sense of humor.

Indy. Yeah, yeah, yeah.

Marie. So he got the crowd with him and once you do that well every one else he makes look like a fool, and the funny thing every one else is telling the truth.

Indy. Yeah.

Marie. He was the one that was lying, but he didn't deny it . . . see he came right out, an average person on the stand if they said ah, look your a con man, wouldn't they be a little bit to try to hide, . . .

Indy. Oh he's sharp.

Marie. He came right out, he said how smart could I be after all the yakki indians.

Indy. Yeah, thats what he did I think he really impressed that Judge up in New York, that Pratt character.

Marie. Oh, you know when the due process came out? he read it he brought home a copy of it . . . and ah, he wanted me to read it . . . so I'm reading through the thing, but I notice Pratt was quoting him.

Indy. And says that he should get a medal or something . . .

Marie. And and you know I remember saying to Mel, I said Mel aren't you the one that said you can't cheat an honest man? I said Pratt's got that right in here.

Indy. Uh,uhm

Marie. He says yeah, you'd think he was my father. Pratt thought he was funny, a, Johnny Carson, they call Pratt right?

Indy. Yeah

Marie. And a, he loved his sense of humor, in fact Mel was on another trial, he mentioned there was an Italian judge, Cavilleri or a, I don't know his name, but I remember it bein mentioned. And he says, well the judge would turn around and say, now look Mel don't answer it that way, now wouldn't a judge come and ask a witness 'now Mel' wouldn't you say Mr. Weinberg. But they were real buddy, buddy. So I don't know what was goin on.

Indy. Did he know Pratt . . before?

Marie. No, he never knew Pratt, but evidently Mel was the charm er, charming, he came on like, he was doing this for the betterment of society

Indy. Yeah they did a lot of, a lot of Judge shopping

Marie. Oh and I got a better one for you.

Indy. Yeah

Marie. Ah, he needed some money. He got pissed, the agents owed him money they promised him, so ah, he says ah, boy the governments word is no good, you know, I says well you should have gotten it in writing, like that, you know, he said there not gonna give anything in writing, he says ah, don't worry. He told John Goode, that I had had total Hysterectomy . . . wait a minute, listen to this Indy, he even(used)? me for medical bills.

Indy. Uhh, uhm

Marie. And he kept pushing the agents on this. He kept telling them all—Alright?

Indy. Uh, uhm

Marie. And evidently they came through with the money. Now, I, I'm here and I get a phone call—Bruce asks me 'How do I feel' What do you mean, how do I feel?

Indy. Ohh

Marie. I feel fine. I found out he's tellin them all I had a total hysterectomy.

Indy: Oh God and then he needed, and it came up as a real sympathy kick.

Marie. Oh yeah well, you know, he figured that if they wouldn't give it to him one way, they'd give it to him another, and then ah, he came home once this past summer, and ah, oh he says we're gonna got to Tampa, okay? I'm takin you away for a couple of days . . I think thats, a, er, . . I've think we've only been away twice. We went to Disneyland and then Tampa and who came with us, he had the motor home. Now the motor home he's got in my name. I found, it's in my thingy, the motor home is in my name.

Indy. Uh, uhm

Marie. I didn't know anything, he was even buying it—I didn't know whose name it was in, but I found the ownership, the a, Insurance, or whatever you call it.

Indy. That's wild

Marie. Okay? Now he keeps it, I asked JR about it, I never see the Motor Home where is it? He said he's got this man who has a big driveway and he keeps his motor home there and he made a deal with him to keep it there.

Indy. Uh, huh

Marie. All right?

Indy. Uh huh

Marie. Now I don't know what he uses it for, but anyway, that's up in Stewart somewhere, or Jensen Beach, Jensen Beach is right after Stewart, it's all part of the same thing, it's all Martin county. Well, uh, his business is up there, from what I know, they know him up there, his lawyer, the lawyer, the one who is trying to get him his license for a private investigator, he's working under someone else, now, Kunen, Kunant is his name, something Kunant, In fact, I've got his thing here, it's really uh, I mean it's really

Indy. Koonantz, the guy he's

Marie. No, it's not, I had the name wrong, when I wrote to you on this thing you didn't see it, it's not Koonts or Kunitz, Oh gees, I've this card here, get the card out, I've got the card right over here in my bag, I'll give ya his name, and I think he's got this guy, hold on a second,

Indy. He's got him fooled too,

Marie. Uhm, I think he's got this guy, promised him the world, he's sharing office space now, I think, they know someone who is a private detective up there, and they're uh, doing business with him, where's that guy's card, goddam, I know I have it, ok, ok, yeah, here it is, the name is Andrew T. Koonen, I guess Koonen, C-O-U-T-A-N-T, area code 3-0-5, 283-8250, and he's at 40, 43 East Ocean Boulevard, Stewart, Florida, 33494

Indy. That's gonna be his partner, right?

Marie. Well, the lawyer that he uses, let's put it that way, and the lawyer is the one, in fact, I've got here, Mel Weinberg and Evelyn Weinberg, the inaudible . . . of Stewart, Florida, in consideration, inaudible, I think go on this first, and I wanna see what happens, lemme put it to you this way Indy, if at all, it's possible, that they say you lied in that book, you could hurt people too,

Indy. Yeah,

Marie. It's a very thin line with him, he'll lie, and he's done it to me, he's been lying to me for actually a full 14 years,

Indy. Maybe, that's the only place he tells the truth

Marie. In his lies,

Indy. In his book, in his uh diary

Marie. Well, I was reading the part that concerned me, and uh, there's not that much in it, only about the first ten pages, and it's very small writing, now, find out if you can, if he had, if the Justice dept. asked him, the judge, the judge now, Judge Pratt, if the judge asked him, for a ledger of his activities, a period of time, during Abscam, what may've been they may've made up books, you follow?

Indy. Yeah, I know, why don't you, you know, another way that may very safely uh, inaudible, with the judiciary committee,

Marie. Pardon me?

Indy. The House Judiciary Committee

Marie. What about it?

Indy. Well, they, they're this is off the record, now, I'm telling something that no one else knows,

Marie. Ok

Indy. But they are planning a huge investigation of Abscam,

Marie. Wil, I've got news for you, I don't see how they're gonna get too far, everything's centered, you know that condo up there? that condo's got everything in it, between that condo and uh, he doesn't have an office yet, but I think he would put everything up there because he has protected that place, he won't let people near, nobody knows where they are, that's why he uses those box office numbers.

Indy. Well, why don't you at least arrange to have the book delivered to one of those staffers?

Marie. What staffers?

Indy. To one of the staff of

Marie. Well, I tell you why, I spoke to Bob Green, and Bob said he has a book, he has books now, 78, 79, he asked Mel for the 80 one and Mel said he didn't have it, ok? now I don't know what the books were about, the 78, 79, I was even, I mean, I'm suprised he bothered admitting that to me, you follow me?

Indy. But this is basically a diary?

Marie. A diary, a date to date diary, everything's in it and I know the part about me and her is true because I can, I don't know the exact dates, but I can fix what he was doing, he was living here, he was with her, and he would pop in during the day and say Oh, I've gotta go listen to tapes, and he'd run up to Stewart to her place, I didn't know it, I though he was down in Miami, he was always telling me he was down in Miami, here, I was feeling so bad he was tired, cause of these damn tapes, it was all a lie, he didn't go any further than up here, all the agents were up there, now all of the agents know about it.

Indy. Yeah,

Marie. Tony knows about it, John's been up there, in fact they've all gone out for dinner and everything else, now John knows I'm married to him here, so evidently John can't say anything, or it's an out for John and his girlfriend, you follow me?

Indy. Yeah, yeah, he goes over there, right?

Marie. Sure, and uh, they're known up at this Alpine House, Mel tried to buy the place, he was gonna try to get the guy to give it to him for practically nothing, and make a beer hall out of it.

Indy. Yeah, they all protected him, every one of them.

Marie. They had a reason, and in the beginning, none of them, in fact Bruce Brady was, Jack McCarthy cried to me, he came in one day and he cried to me, and I felt for him because everybody was, in fact, even in the book, they make him look like an ass of all time, and Jack wasn't, Jack just wasn't used to street smarts, Jack was used to pushing a pencil, and Jack wanted to make a name for himself, listen, that's . . .

Indy. Why did he cry? What'd he tell you?

Marie. Well, the whole thing happened you know when their first success with the airplanes, with the art deal, well, they came in the house here, and Jack was pushed to the background, Jack off the Abscam thing, but they had an office around the corner, from me, in the FBI building, in the Bank building, the FBI was upstairs, and in the back of the bank building, on that floor, they opened the first ABSCAM, then they moved it down the road to uh, down to the office they opened down on uh,

Indy. In Hauppauge.

Marie. In Hauppauge, no not Hauppauge, Hobrooke I think it was across from . . .

Indy. When did it start, when . . . (cuts off)

Marie. He said hey he's got a little scam going. Meltzer wasn't in on ABSCAM at all . . . It was a fluke. It really was a fluke that's one thing I know and when Gunner found out that . . . hey he's got this guy, guys supposed to be on parole or somethin . . . I don't know what, but he supposed to be watching him, and ah, he believed Meltzer on something and Meltzer pulled a swindle.

Indy. Yes but let me tell you, Meltzer, you see now let me tell you something else, Meltzer was hired by Mel, through a man that Mel knew in organized crime by the name of Sonny Santini. . . .

Marie. I know Sonny, I met Sonny many . . .

Indy. Well how do you think, now you see how do you think Meltzer. . . .

Marie. He'd come over our house . . . I never liked him, I said who was that creep.

Indy. He's a bad man, bad man

Marie. He says I'm gonna use him, in fact they were looking for him, the agents were looking for him and Mel tried to find him, and he was in Vegas and what not . . .

Indy. He's from New Jersey . . . then Brooklyn, then Vegas

Marie. Right and Sonny had with him up in London Investors, or used to go up there and use Mel's phone, Sonny did. And he used to bring his nephew with him. A kid he passed off as his nephew I don't know if it was or not and he was always there with this kid. Right? And he was very friendly with Mel, sure he was friendly with Mel . . . Mel let him use the office and make calls all over the country . . .

Indy. See Meltzer has got a number of tape recorded conversations between him and Mel . . .

Marie. I don't think he has . . .

Indy. Oh he has

Marie. I don't think so . . . I heard about that, see I heard something about that . . . and I heard that he did that because he thought he could get himself out of, ah, trouble . . .

Indy. Oh that's no question about that he was, he was, he was going to jail for eight months for securities fraud you see . . .

Marie. Well why didn't he, why didn't he come up with the tapes then?

Indy. And ah, well Hilda has them, he's got lots of them with Hilda right now . . .

Marie. Yeah, but see . . .

Indy. And ah, and ah, Hilda has them I know that

Marie. I . . . I don't know I'll give ya an arguement there . . . I think Meltzer found a good thing and he's using it . . .

Indy. Oh there's no question about that, but ye see, for Meltzer to find out . . . I'll tell you what a, Marie, Meltzer had no way of knowing one thing: Number one Meltzer had no way of knowing about ah, Michael Elzay and the Chase Manhattan Bank and the fictitious bank account there . . .

Marie. Oh right.

Indy. Number two; number two,

Marie. He, he could have got it from an agent.

Indy. Alright, I'll tell you something, of course I'll tell you how the agents covered up for Meltzer. You know I've been in California and I've talked to each and every person——

Marie. See Good could have lost his job over it and I don't know what happened but there was a lot of scurrying around.

Indy. Well, that's the whole thing because, you know, you know the people they scamed? This, Intersea Fisheries which is owned by Jacques Cousteau. I mean they just about destroyed Jacques Cousteau and Michael and and and Richard Stanzick and Bob Vaughn whose one of the most brilliant shipbuilders of the—from Denver.

Marie. Yeah.

And ah, every time that these people complained about Meltzer, to either the Denver or the San Diego office they would call Gunner and tell him and tell Gunner to watch it.

That's it.

Indy. And, and Meltzer would find out immediately as to who was complaining about him.

Marie. In fact Mel had a meeting with Gunner and told Gunner to watch Meltzer because he's gonna get himself in trouble—and then (inaudible) I don't know what the trouble was but Gunner—got caught—and ah, something happened—and boy they were scurrying—and they went after Meltzer right away to shut him up.

Indy. They did.

Marie. Am I wrong?

Indy. Ye—ye—nope your your absolutely right, but not only that, now, now, Meltzer—Meltzer was running his own shieks okay? He was running a guy called Ali Bel Rahmon and someother Prince Fahd or something like that—one of the people that Meltzer—you see there's a connection—I'll tell ya—and that's the connection I made, because one of the people ah, who Meltzer was scamming was a guy, a swedish guy by the name of Kai Gulve—K-A-I GULVE and Kai—ah, went to New York, he called the Chase Manhattan and he was given the connection and Kai was at the Left Hand—immediately after the boat was burned—how do you think I first found out about the boat and he said he could smell it—and Kai met Mel Weinberg and he met Tony DeVito.

Marie. Right

Indy. Amoroso he was there, now, now that's where the ABSCAM and the Meltzer, the Meltzer scam and ABSCAM come together—you see Marie the point is that if the government ever admits that Meltzer was allowed to rip off honest businessmen and destroy a shipping company.

Marie. Oh sure.

Indy. So ABSCAM—It'll, It'll destroy em—and thats and thats why they keep saying that Meltzer was not part of it

Marie. Right I know that they said that he just made it all up, you know, 'cause, you know there's so many people involved, Indy. Everyone started running there own damn thing. Then you have agents who are all jealous of each other each one trying to top the other guy.

Indy. Uh, uhm.

Marie. And ah, like they brought Myron ah, ah, what's his name?

Indy. Fuller—Myron Wagner.

Marie. His name is Myron Wagner, isn't it?

Indy. Right.

Marie. He went as Myron Fuller.

Indy. Fuller—right.

Marie. And he—was under—I mean—no one ever heard of the guy they used him as being the—setting up the banking thing. He was there Secretary, Treasurer or something—and then they were fightin over titles—Jack wanted to be President—and ah, I mean it was just ridiculous—it was ridiculous. You know everybody was fightin—this was in the beginning—they were tryin to get organized and finally Mel hadda get Jack out—because Jack—Jack was wearin Sears suit—lets put it this way—Mel said, the equivalent of, they went on the boat or somthin and Jack was there—or they went to some meeting—and he said Jack walked in and Jack just looked terrible—you could tell it was cheap—if you're fronting for the Shiek you gotta be sharp—so they took ah, you know Dick Farguar?

Indy. Uh, uhm.

Marie. He played the Shiek.

Indy. Yeah, yeah, Far—Farhart.

Marie. Yeah Harhart—He, he—in fact we—when we weren't ah, oh one of the time we went over to Cape Coral—we went for a drive and we took Dick with us Dick was down here for the weekend. And a very good guy, he's just a swee—he's Lebanese—oh, just a marvelous person.

Indy. Uh, uhm.

Marie. He's just so sweet. I couldn't understand him doing this—and he said he's never done it before—he's strictly in the pencil pushing——

Indy. Uh, uhm.

Marie. You know he didn't even—he was out of his depth but he didn't have to say anything right. But he could speak ah, ah—

Indy. Lebanese and Arabic—yeah.

Marie. He could speak all of these languages.

Indy. Yeah, right.

Marie. In fact I, I, I thought he was such a doll I bought him a little camel for good. He was a sweet kid—he was only 23 or 24 but just completely out of his depth—you know he's playing everything by ear—and ah, I mean it was ah, unreal.

Indy. Do you know—all of these guys are gonna pay believe me and I'll tell you why. That Civil Lawsuit that Harrison Williams has filed it's going to a judge that's going to take the FBI apart believe me it's gonna be.

Marie. But they—they—how can you take them apart if they're covering so—Indy——

Indy. I'll tell you why because a civil suit allows much more disclosure than a, a, than a criminal suit.

Marie. Well, ya know they had ah, a grand jury hearing and they had this. They had—they had em on the stand and where were these lawyers—they didn't ask the——

Indy. Oh, the lawyers were the biggest bunch of idiots in this whole thing because they didn't know how to fight it.

Marie. They didn't—er, ah, look, first of all let'er, me tell you something, there were so many people, let me put it this way there were so many people involved, there were so many agents doin there own little things.

Indy. Um.

Marie. I think that was the whole problem.

Indy. The whole operation had gone beserk, the con men were conning the FBI, the FBI agents were conning each other, I mean the whole thing.

Marie. That's what I'm tellin ya—it's true—you can—I got news for you down here you couldn't even find them. I had Steve Birch (here) he was an agent right?

Indy. Yeah.

Marie. Steve stayed over here one weekend, I mean at the time I thought it was protection, what do I need protection nobody was even supposed to know where I was right? Meanwhile ah, Bruce was going over to get my mail—I had—Steve was stayin upstairs here and ah, all Steve was worryin about was gettin divorced and he met this girl (inaudible) and he was taking off to California with her, San Fransisco, and he left his wife and took off. He was goin out on the boat with us, Mel would bring the boat down and rest it in the Marina, evidently because the agents were here at the time. I don't eh, eh,—evidently the place wasn't finished up there, with her in it.

Indy. Yeah.

Marie. See—and he'd put em here—now I see all the agents—I saw em up in New York—Nobody ever said a word to me—I mean ah—you know if they even suspected anything—nobody would—they wouldn't rat on Mel.

Indy. Uhmm.

Marie. So they figure—what do they care—they were gettin they're ah—Gold Stars—and ah—they didn't care what Mel did. I mean it's a domestic thing really who cares really.

Indy. That's right.

Marie. Really—you know.

Indy. That's right.

Marie. But what I found is that with all of these court cases and everything—I—a—I says, hey—I—I might as well get right on line with everybody else—you know, I—I'm gonna go to the head of the line—after all I lived with the man.

Indy. Ye—that's right.

Marie. How, how stupid could I be—but you know what—I says (inaudible) she don't wanna know until it got to a point where it was bein shoved in my face—and hey—then, ah, oh, Mel cut in on Bob Greene's call the other night saying it was an emergency right? So Bob said to me, "don't do anything drastic," and he says if you have the eighty book—now he admitted he had 78 and 79, okay? So there's been a series of a diary kept—why this one was put in the drawer—and the only reason I looked for it—is Mel called me up and asked me to get JR's passport—and I looked all over and I couldn't find it.

Indy. Well, why would he keep a book like that lying around. I mean Mel's not that stupid.

Marie. Ahhh, yes, Mel left a lot of stuff in this house, but evidently when he—I found out abut the girl—up there and the place—he came in here and he cleaned this place out.

Indy. Oh, and he just left a few things there.

Marie. Oh, his clothes are here, but ah, I looked down now in my wall unit—there's nothin there—I found a couple of tapes layin around I went upstairs and put em on my little a—head-set thing—and they're nothin—they're blank tapes.

Indy. Ummm.

Marie. You follow me there is nothin here—absolutely nothing. So he's got it either up in a, a, safe deposit box—but I think it's up in that house, because he wouldn't let that out of his sight.

Indy. Ummm.

Marie. Now, Jim McGee—the a, a, reporter from the Herald called me up and he said ah, "Is Mel there?" and I said, "No, he's outta town." And ah, he said well I want to drop off the suitcase with all the tapes and everything, the transcripts. Mel had all the transcripts—constantly—all of them—and, ah, I didn't want em here. I . . I . . I you know . . I don't wanna be responsible for something like that. I says he's not here—you'd better wait until he comes back and you talk to him. So when Mel called me I said, listen, this guy called up, this reporter—he said he's got the suitcase, and he's returning it to you—this is the suitcase he dropped off to the guy at the Ramada. And ah, I didn't know what he was doing. He—when he opened the trunk, and out comes this big, ah, suitcase—so the guy evidently was studying (tape cuts for a second). And ah (tape cuts again into Silvestri).

(Phone rings.)

Marie. Hello.

Indy. Hi. It was ringing and ringing and ringing. Did you go out somewhere or what?

Marie. No, it wasn't ringing here.

Indy. Yeah—and ah—so now I called—there was all kinds of a—could hardly hear—can you—can you hear me now. I think we had a bad connection.

Marie. Yeah, I hear ya.

Indy. How was Thanksgiving?

Marie. What (inaudible).

Indy. Yeah.

Marie. I don't know—I had it with JR.

Indy. Huh.

Marie. I had it with JR.

Indy. What, did he come in?

Marie. Yeah.

Indy. Yesterday? What happened?

Marie. Nothing. He just a—I just got to the point I said to him there's nothing I have to say—he knew everything that was going on.

Indy. Like what?

Marie. No sense lying to me, you know.

Indy. He said what?

Marie. I just told him that I knew everything.

Indy. Yeah, yeah.

Marie. And there's no sense lying—and you know—you couldn't bother him. He said he was coming over here today again.

Indy. Huh.

Marie. And I said don't bother it's over—there's no reason to—So he said well he has a Christmas present he had wrapped up for—he wanted me to wrap up for JR from him and I.

Indy. Yeah.

Marie. And I said you better give it to him yourself—I said ah—don't mix me up into it. He left something for (inaudible).

Indy. Probably suprised the hell out of him.

Marie. Well he's gonna see him for lunch today—went down to work—my son has an hour off for lunch—so he went down——

Indy. Well I hope he doesn't start turning him against you or something?

Marie. Oh well I expect that I ah—my son is far from stupid. My son knows what's going on.

Indy. Incredible.

Marie. It's a—I mean, I'm just a—so sick you know.

Indy. I know you sounded very depressed today—your not sounding your——

Marie. I don't feel good—I really don't—I feel sick—I mean a—just the whole thing—and ah—and then he said to me—oh I'll come home around three o'clock Thanksgiving I'll take you—both of you out—I looked at him—I said look you don't have to give us charity—you have a place—you go there—so he says well—he says ah—you know it happened—it happened—I said you treat it that lightly—I said you know—I said it was all pre-meditated. It was something that just happened. I could see you havin a fling—six months—I said—really I said—I think I could forgive ya—I mean it could happen to anybody—but I said this was just pre-meditated—ah—for 14 years—ah—he said it was only 10 years. Just like that I said well, I'm not gonna go into semantics—what's the difference 10 or 14. So I said she says 14—you say ten. He says ah—she doesn't know anything. So I'm just listening.

Indy. So now she's the liar, right?

Marie. Yeah, you know—I says—ah—I said I just cannot believe it you would do this—I mean you know I wanted to believe you—he says well I don't know why you bothered ah—looking into it anyway—I said why so I could be deceived for another ten years? I said you don't do that with people—I said ah—my God if I had met somebody and that—the shoe would a been on the other foot—I think you'd be feelin a little ah—I said you can't even picture this—I says Mel where's your feelings? Nothing—nothing at all—

Indy. Listen I—oh, by the way I—I—got—received a package from—you know—Listen I—I just wanted to open—can you wait just a second?

Marie. Yeah.

Indy. I'm just gonna get it from the other room—hang on a minute.

You see now this one is addressed to me but that's care of—a—the office—care of the syndicate—

Marie. Is it a white envelope?

Indy. Ah, no. It's a yellow envelope.

Marie. Yeah, that's probably it then.

Indy. And I—I just wanted to explain—the a—print—what the hell is that about?

Marie. Oh I don't know what that is—that maybe for the—a—that maybe up there for the—a—detective agency.

Indy. Ah, okay, now—a picture now what—eh—what is that equipment?

Marie. That's the a . . pictures of the Georgetown house.

Indy. That's the one!

Marie. That's the Kodak . . look on the back of it . . they're the originals.

Indy. Oh, you mean of the street house?

Marie. Yeah.

Indy. Okay. I thought that was the condo?

Marie. Look at the ba . . noooo.

Indy. Ah, okay . . okay.

Marie. I don't know if it's anything . . it's just the only thing I found.

Indy. And with the with the equipment inside it right?

Marie. Yeah.

Indy. Okay . . I thought that was the Florida thing. Okay then we've got the (inaudible) business.

Marie. That's all just . . just a . . the only thing . . I don't know if it's worth anything.

Indy. And the model that was in your name. Alright now this affadavit. Is there any significance?

Marie. Remember my name is Cynthia Marie.

Indy. Yeah.

Marie. Evelyn is her name.

Indy. Now the a . . Motor Trailer?

Marie. That's in her name.

Indy. That too.

Marie. That's Evelyn. Look——

Indy. The recreation vehicle?

Marie. That's . . look on the title . . Mel and Evelyn . . that's her name.

Indy. Oh yes, yes.

Marie. That's not my name . . her name is Evelyn she likes to be called Eve . . so I mean I'm not a . . when I said it to him . . when I told . . that . . he said oh that's not true.

Indy. But you have . . you have the proof now.

Marie. I didn't show him that I gave it to you.

Indy. You have the proof now. Now what is this? What is this? What is this affidavit business?

Marie. Oh that was something he come home with a . . He was walking with Ray Rolly . . something from Jenrette's . . and a . . Jenrette approached him and started something in the hallway . . so Ray says a . . c'mon we'll make out an affidavit in case a . . he does anything . . and that was the original affidavit.

Indy. Oh, he never turned that in anywhere?

Marie. They had one turned in evidently . . I don't know how they got that one . . like I'm saying . . stuff was there and the originals came out. That's how easy it is.

Indy. Okay, I'm just looking through some of the ah . . okay the Martin County . . yeah I know . . I know . . Okay here's the . . here's the interesting . . rah . . lets see this is a . .

Marie. There's the list of names of the reporters on there . . the clipping.

Indy. Yeah, right. Right. Now ah . . who has done the yellowing?

Marie. Pardon me?

Indy. Who has done the yellow? . . You know there's some yellow marks through the a . . the highlighting.

Marie. Oh, oh, oh, I had done that.

Indy. Okay. Now the one that you sent me up, a Larry Nathanson?

Marie. Uh, uhm.

Indy. Yeah, where he says the Chief prosecutor admitted that four tapes made by Mel had disappeared . . probably stolen and they disappeared during the plane flight.

Marie. You can't prove it . . you see they went all through that thing.

Indy. Stolen from a flight bag.

Marie. But see like I say . . hearsay is one thing . . you know what I mean? everybody said he took it . . you know what I mean? But ah . . you know it's just ah . . (sigh) the man is . . I . . I . . tell ya I just don't believe it . . then he started in ah . . while he was here he . . ah . . my neighbor across the way . . he . . oh God he got almost violent . . and I just looked at him . . I said I'm not gonna get angry . . and I'm just gonna stay very calm. cause ah . . I don't want to get into a shouting match . . I mean I don't have to say anything . . he knows what he did . . I don't have to prove anything . . you know in his heart he knows . . so ah . . he says I'm gonna ruin——

Indy. But ah . . ah . . do . . are those . . do you think those tapes are in his . . in his new apartment there?

Marie. Ah, either that . . did . . oh . . do you see the one on the boat?

Indy. The a . . clipping on the boat? No I haven't got . . what is that?

Marie. It should be in there.

Indy. Mel Weinberg . . 60 minutes . . no . . you talkin about the clip?

Marie. No, it's a . . a white a copy of the sale of the boat notorized.

Indy. Oh, here, yeah, sure.

Marie. Okay . . see down in the left hand corner . . Countent? (spelling.)

Indy. Oh, yeah.

Marie. That's the lawyer's name.

Indy. Yeah.

Marie. That's the lawyers name. Now he's very friendly with this guy.

Indy. Yeah, yeah I have his number.

Marie. Alright . . wait a minute now. I asked my neighbor over here because she had to get that copied right? She sent him the original. She said he's as guilty as can be.

Indy. Uhm.

Marie. But I says, well . . Mel's using him, . . but she says well probably promised him the world you know . . he's a . . a . . not a big time lawyer or anything. Well he said something about he has a . . a safe, not a safe a ah . . oh what do y call it . . a file drawer . .

Indy. Uhm, uhm.

Marie. Under lock and key. Then he asked me do I have any ABSCAM transcripts? And I said ABSCAM trans . . I don't have anything . . why would I have it.

Indy. Uh, uhm.

Marie. Ah . . and he didn't say anything, he says . . well I took it up there under lock and key. But he may have just . .

Indy. In his new townhouse you mean?

Marie. At Coutons.

Indy. Yeah.

Marie. So he may have just said that to me to throw me off. Then he said to me; What did you say to Bob Greene?

Indy. Uh, uhm.

Marie. I said Bob, I said the night that I called you . . you cutin on an emergency call . . I was talking to Bob, I didn't say anything . .

Indy. How did Coutant know you talked to Bob Greene?

Marie. Couton didn't ask me about Bob Greene . . Mel asked me that . . this is going onto another conversation.

Indy. Yeah.

Marie. The night that he was in the Hotel up at the Mariott. When I spoke to him.

Indy. Yeah.

Marie. And ah . . . I spoke to Bob Green first (insaudible) call. But I didn't tell him I said anything to Bob . . ah . . Bob had . . evidently

Mel's been trying to get Bob and Bob's been avoiding him.

Indy. Uh, uhm.

Marie. Okay?

Indy. Uh, uhm.

Marie. Ah, he says I hope you didn't say anything to Bob, I says what am I gonna say to Bob? I was talking to Bob I asked him about Lady Evelyn in the book.

Indy. Yeah.

Marie. And, ah . . I said that's all I said but remember Bob told me he had a book of 78 and 79 and you said maybe not.

Indy. Uh, uhm.

Marie. And I said I think so because I really believe Bob wasn't lying there and something (happened?) from that day I haven't gotten a Newsday up here . . Bob was sending me Newsdays.

Indy. Uhm.

Marie. He sent them actually to Mel . . and, ah . . we haven't gotten any at all here . . now no mail comes here just except my household bills . . which is nothing . . you know just telephone, water bill . . but nothing come up here . . and ah . . Bob he said Bob's been avoiding him evidently he hasn't . . he's been tryin to get him and ah . . the movie's supposed to be signed in January . . something the first of the year.

Indy. Uh, uhm.

Marie. That would figure out . . when I asked Mel for a divorce he said wait three months.

Indy. Yeah, right.

Marie. Okay, now that blends in. Then he said to me ah . . Oh Gunner called me, he said. I said Gunner? He said yeah, he said Gunner called me and he said I wasn't taking care of you. That was ah——

Indy. That was after you called Gunner.

Marie. Right . . but Gunner did call him right away . . I know Gunner. Gunner would call Mel immediately. But Mel see He'd lie and catch me . . you know ah . . try to create something . . so I said well look I don't care what Gunner or anybody else I said ah . . I spoke to Gunner but ah I don't care what Gunner said I said the whole bunch of you are such liars that I don't believe anything any of you say anymore. You follow me? I said as far as I'm concerned Mel I just don't wanna be bothered. I said it's its really been a shock to me—you couldn't care less . . and I said you know you always ah . . you'll realize what ya lost . . . maybe in time . . he says oh that's true.

Indy. Yeah, maybe he will; Hey, oh, a . . I gotta tell you this . . it's fantast . . a . . I've got . . confirmation from the ah . . DeLorenzo Errichetti side.

Marie. Did you?

Indy. Yes. Alright here's what I've heard . . what I've learned okay. DeLorenzo . . uh . . a . . what this was now March.

Marie. Hey, ah . . listen if I have to pop off quick because he may be pop in here after taking JR to lunch . . I don't know.

Indy. That's no problem.—okay no problem at all—we can always you know alright..Alright he says he drove Errichetti—right.

Marie. Wait he told who?

Indy. Now, I'm saying this is from you know the the the drop off—the Erichetti thing?

Marie. Go ahead.

Indy. Okay, He said that he dropped Errichetti off—on the—now listen to this—ah—he got a briefcase—they put this briefcase in their car—okay this is April the first 1979.

Marie. Could be I'm not sure.

Indy. And they got the briefcase in the car alright? And they went ah—DeLorenzo picked up Errichetti with the briefcase in the car and they went to a meeting place to meet Mel Weinberg right. ah—they drove they say to a rest stop—between Route 52 to 55.

Marie. That could be it but it wasn't a rest stop. It was right down on a hill.

Indy. Holiday Inn.

Marie. Oh, yeah, that that that was——

Indy. Okay, what he said was that Mel was in a Lincoln Continental?

Marie. That—I was driving it but they—I don't see them..Mel went inside.

Indy. Okay, now, what he says is that Mel got into his car for awhile.

Marie. Yeah.

Indy. And it was a very short meeting.

Marie. Yeah.

Indy. They took the briefcase and, a—then drove back.

Marie. Nope that wasn't it. This was actually in a hotel. He got out and went inside. Now I never saw Errichetti. Never saw him.

Indy. Uh, uhm.

Marie. And ah, I don't know if Errichetti had been check in or what or had just been drive there. I saw come around the other side—never saw them. I sat in the car and about ten minutes—boom out he came and shot home.

Indy. With, with a briefcase?

Marie. That I don't remember, whether he had a briefcase or not. Cause see I didn't pay attention at the time. I didn't know what it was all about.

Indy. But would this have been about April?

Marie. No, I think it was a little colder. Really.

Indy. Well, you left in July.

Marie. (Inaudible.) No, I think it was before then really. If if no that was too close, no that's too close, because I knew we knew we hadda move—it—it took me quite awhile there was a few months there where I started packing things—you know and that's when I had all the agents over—but ah—it wasn't a rest stop now—definitely wasn't cause I remember that very distinctly.

Indy. No, he said it was off the Long Island Expressway.

Marie. It was; it was.

Indy. And it was it was between Route between ah—between ah—exits 52 and exits 55.

Marie. It could've been and that that sounds plausible. But there was a motel you know the hotel the ah ah one level affair, down on the side.

Indy. Well, he may have been describing it as a rest stop—for all we know.

Marie. No, but there's rest stops there which is altogether different.

Marie. You know a rest stop when you see it on the expressway. He would know a rest stop from a—this wasn't a rest stop. Cause this was a service road. It was off the service road. And a . . . Mel was very nervous . . . he said now don't . . . just stay right here don't go anywhere. And I just sat there for about ten minutes. No.

Indy. So you think they're talking about different meetings then?

Marie. Could be . . . there could a been another meeting.

Indy. And . . . alright . . . what he claims was that a . . . a . . . okay at this stop that there was a . . . 75 or 80 thousand dollars. It was split a . . . half . . . half. They got a . . . Mel got about 45 is what he claims.

Marie. That's the number I know. But that was in court see and that, that's what verified that to me but now maybe there was another meeting that we don't know about. Do you know what I mean? . . . Hello?

Indy. Yeah, I'm here.

Marie. Hello?

Indy. Yeah.

Marie. Hello?

Indy. Can you hear me?

Marie. Yeah, I can.

Indy. Yeah.

Marie. Ah I don't know—unreal.

Indy. Anyway listen are you getting any pressure on that . . . on the black book?

Marie. Yes.

Indy. From? From the FBI?

Marie. No, no, no . . . what, what I got was he asked me and I said ah——

Marie. (Inaduible.) I said you know I burned it up. He said what are you gonna try to do blackmail me? I said Mel I'm not like you. I said . . . I said I burned it . . . I said I'm not you . . . I would never blackmail anyone. I said what would I gain now by even (inaudible).

Indy. Yeah but he might try and ah . . . get to you. And ah . . . use JR to try and destroy it.

Marie. Well I think he will try it with JR definitely.

Indy. He's gonna try it with him.

(End of tape side 6.)

Marie. You know.

Indy. Yeah.

Marie. I'm just letting him know straight out because I can talk to him. He looked at me and he didn't say anything but he said . . . he misses his father . . . and he's still his father I mean JR knows everything that's going on . . . but ah . . . I don't wanna discuss it any more. That's it.

Indy. Hey, listen . . . I . . . I am still toying with the idea of a your calling ah . . . some of these guys.

Marie. Well, then, I got a problem cause it's gonna go right back to him Indy.

Indy. How? Well so what if it goes back to him.

Marie. But then they know it's me Indy. You follow me? You know Mel is not stupid. He is far from stupid. He was trying to find out something yesterday, and I just sat back and he couldn't bait me.

Indy. Like what?

Marie. Well, like he asked about the book, and he asked about Gunner, Gunner called him, and his way of baiting me was ah . . . Gunner said to him that he wasn't takin care of me . . . okay? That he'd walked out without leaving a cent here.

Indy. Uh, huh.

Marie. He said Gunner said this. Now he's waitin for me to jump in, and correct it.

Indy. Oh, I see, That, that——

Marie. Mel I said you know, let me tell you something, you have no say so of what I do anymore. I said I am what we call a free agent. I said I don't wanna be bothered. I said I'm still in shock over it. I am sick over it. I said it doesn't seem to bother you . . maybe you can't understand it . . you're, the way you think. I said but what you did was terrible. It was premeditated. I don't wanna hear about Gunner . . I don't wanna hear about any of then because to me it's all lies. I don't believe anything you say. How . . once you lied to me . . that's it, I cannot believe you.

Indy. Un, uhm.

Marie. And I said . . as the lies that I found. I said there's no reason for it.

Indy. You know one . . a . . other thing . . I was looking at my notes . . that we were taking that night . . um . . you said that these tapes were found? Remember you said about the forty tapes——

Marie. 44 Tapes. Then they claimed they found them . . it was a big stink. Now what I was . . I said to myself . . you know I was very stupid. When they came here, Tony and Gunner I should have had them sign.

Indy. But there was no requirement though?

Marie. Of course not but to protect myself. They could have slad anything. What if they lost the tapes?

Indy. Un, uhm.

Marie. They could turn around and say they never picked them up here.

You but, but you put them, but you put them in the boot of the car right?

Indy. I mean I'm just making sur——

Marie. No. No, No. I was in my kitchen and they were on the counter. Piled up.

Indy. Un, uhm.

Marie. They came over and they were go—all grabbing a handful and I said, "Look, let me give you a plastic garbage bag to put them in."

Indy. Uh, uhm.

Marie. Then put em in otherwise they're gonna get thrown all over the place. So ah—they—ah then they agreed and—a—I gave it to em—and they went out and they threw em in the trunk of the car. They went out drinking or something and forgot them.

Indy. Ummm.

Marie. They were in a rental car evidently. And they completely forgot about them. Evidently they must've tracked the car down and ah—found em.

Indy. Oh because then they then they called you and said we can't find the tapes right?

Marie. That is—a—this is awhile after now.

Indy. Yeah.

Marie. Going—a month later.

Indy. Yeah.

Marie. And then they said do you, "I didn't give them tapes did I?" "How many tapes?" And I said look you guys were here and you took the tapes.

Indy. Uhmm.

Marie. I said, "What would I do with them?" I don't know anything about them. I don't even want to know anything about them.

Indy. This was on the Island still?

Marie. No I was up here.

Indy. Oh

Marie. I was here. And it was a big to do . . and ah . . I just told them . . I remembered them taking the tapes . . I says ah . . you know . . you know to try and . . another words make it look like ah . . me or Mel had . .

Indy. Umm

Marie. You follow me? If . . if they had lost them they would try to push the blame somewhere else.

Indy. Umm

Marie. And I told them straight out I said I remember . . .

Indy. Yeah but thats . .

Marie. (inaudible)

Indy. Thats . . thats . . thats very careless behaviour though I mean . . you know I . .

Marie. Of course it's . . but this was all the way down the line. Thats when I started real . . I thought FBI was . . you know . . hey like Edgar Hoover's day right?

Indy. Yeah

Marie. Well forget it . . it's a whole everybody's doing their own thing. Everyone's running around and . . it's . . it's . . it's just that . . you see the way they dress today?

Indy. Beautifully. They dress well don't they?

Marie. Boy and how . . And if they dress like slobs they dress like slobs nobody says anything.

Indy. You know I'm also . . getting co . . getting closer and closer to tracking down that . . the sale of that boat and how much they got for it.

Marie. Oh, I know how much they got. I'd asked the woman. The boat was up for sale for 7500. Now . .

Indy. Oh, no, no, no, no, no, not the UP YOURS. Remember the other one I told you about but you don't but you don't know about.

Marie. Wait a minute you know he dropped a name on that . . he was . . why he said certain things yesterday . . I think he wanted to see if it would come back to him. He mentioned Fitzpatrick.

Indy. I'm gonna call him by the way, you know that?

Marie. Who?

Indy. Yeah, Mell

Marie. Alright but be careful what ya say.

Indy. No, no, no . . I'm must gonna call him and I'm gonna tell him that I've heard from several sources that ah . . ahhh . . that your married to another woman and I'd like to know whose your wife. Tell him something like that and that Jack wants to know about it and . . I'll . . I'll make up something.

Marie. Ah, anyway, ah remember the parties on the boat?

Indy. Yeah

Marie. Fitzpatrick he mentioned.

Indy. Who is Fitzpatrick?

Marie. One of the top agents. One of the agents.

Indy. This was on the Left Hand right?

Marie. Right.

Indy. So what was what was Fitzpatrick up to?

Marie. (inaudible) parties or something

Indy. He was the one who arranged the parties?

Marie. He was, he was the one that was there . . He was a swinger on the boat, with the rest of the..I don't know who they were..but why he sat here yesterday and he started talkin about these things.

Indy. Uh, ummm

Marie. And then he said he met..he met..he saw Bast..

Indy. Dick Bast?

Marie. Dick Bast is that the guys name? a detective?

Indy. Yeah

Marie. Alright, he was in Washington this past time..he's coming down the steps I don't know if it was the courthouse or the..or the what..and ah..a guy pulls up in a car..and he pulls out a wallet..a..like an FBI badge.

Indy. Umm

Marie. Closes it and says hi Mel and as..he says c'mon get in I'll take you to the Hotel. With that a one of the agents came down the step and recognized Bast and says, Mel what are you doin? And Mel backed up, Mel didn't know who he was, so Mel...

Indy. Did he describe him?

Marie. Who Mel to me?

Indy. Yeah, did he describe, did he describe what Bast looked like?

Marie. No he didn't do..he was just talking..I didn't wanna....

Indy. You know what he might be doing? Let me tell you. You know what he..you know what he's doing? He knows that a Bast is after him okay?

Marie. I know he said that.

Indy. Alright, he knows that for a fact. He may be wondering if by any change your are passing on any information to Bast.

Marie. This is what I thought.

Indy. You see so if a..any way the information gets back to him or to the FBI or something a..that Bast and he had a meeting..he's a..you know..that would be his way of confirming it—you know I think it's also his way of trying to find out whether you talked to anyone.

Marie. That's exactly what I'm trying to tell you..He suggested it but I didn't answer him. I let him talk and I said Mel? I don't wanna know your business..I don't even know what your talkin about with Gunner..and I'm not interested in Bob Greene.

Indy. Uh, umm

Marie. Now..there may be no truth to it but he's feeling me out now, Mel's very shrewd that way. He's very quick but he doesn't realize that I know him...and I known what he pulls.

Indy. Ummm

Marie. I've heard him talkin and I now I've heard the lies. Let me..he's been lyin to me. Straight to my face. And I believed him. Now I find everything is different and I remember how he got to me. He followed me with these lies..so he's a great..a..He knows human nature..If you talk to him and ask him the wrong thing..forget about it.

Indy. Yeah

Marie. Now..then he turns around and he says oh..a..Fitzpatrick..was on the boat and a John Goode's wife's name is not rose. He got them mixed up. Rose is his girlfriends name..Rose Marie is his wife.

Indy. Uh, uhm

Marie. And then he said to me..Oh I always mix that up..now he said it for a reason..if it comes back John Goode's wife's is Rose..then he thinks I did it...

Indy. Ohhhh

Marie. You follow that??

Indy. Yeah, yeah

Marie. A little thing like that.a.a.like I always said it's the little things Indy it's not the big things and he was pumpin me yesterday . . He was tryin to set the ground for something. And he said to me . . Are you talkin to anybody?

Indy. Uh, umm

Marie. And he said uh . . I says no . . He said a well what are you gonna do with the book . . blackmail me? I said I told ya I burned it up . . . you follow me?

Indy. Yeah . . . Alright let me let me tell you something. that I checked out and was absolutely flabbergasted by the a . . accuracy of your information . . And I'll tell you what did it.

Alright? this is only for you now okay?

Marie. Yeah but Indy I can only tell you what I know.

Indy. No, no but what I'm saying is . . what I'm tryin to tell you . . is that I'm the one who is doing the checking.

Marie. If I got it . . if it came to me deliberately told wrong . . . and I told it to you then then I'm only repeating what was told to me wrong.

Indy. Yeah, now hold it . . no, no, no that's not right . . see . . I'm a reporter and as you know I'm working with Congressional committee's and all that stuff . . you know that . . . I've never made any bones about that . . I . . As I told you I'm not writing any book . . I'm trying to expose the damn thing . . . and you've been incredible, . . thats thats all I can . . alright now let me tell you something . . how how I did this . . U mm . . and ultimately that reporter . . okay . . I pulled a little fast one on carol.

Marie. Uh, uh yeah go ahead

Indy. Alright? Because basically I was telling you I said you know my God if Marie's information on something is . . is as sensitive as that checks out . . . ah . . it's . . it's incredible. Alright so I called . . I called Carol . . and it was just after I wished you goodbye right. And I and I said you know I'm so and so and she'd heard my name . . and I said that look ah . . that . . ah . . Mel's been a . . talking to Jack . . to Jack Anderson . . alright and . . she says oh yeah we're old friends . . you know meaning she and Mel . . so I said look I'm here travelling through and and Mel ah . . said that there's some kind of information . . a . . on.on.on Alec Haig . . that he tried to give to you . . I said what have you done . . with it . . Oh she remembers that immediately and she said you know I've had that stuff lying in, e . and the paper won't touch it . . because you know we're a small paper and we have a syndicated column . . ba . . ba . . ba . . so I said well look if your not doing anything with it and you've sat with it for so long . . I said can you can you give it to me. So she said okay I'll meet you at the airport. And a . . so she came to the airport. Then she got a little suspicious . . and she said you know . . Mel's been really bad mouthing Jack . . and he's very upset about what Jack's been writing . . you know why would he be a . . . you because she said I don't wanna get into any kind of . . any kind of trouble with a . . with a Mel. Because he's still a friend of mine . . So I so I just basically, I said look ah . . . ah . . see I said . . I don't know I said Mel has strange ways of dealing with people. .he deals with his enemies and then he's trying to a. . .do Jack a good turn. So he'd get good stories. .I said how do I know? Alright.

Marie. I wondered if she called Mel.

Indy. Well now listen ah. .ah. .she knows where Mel lives. .she's been to the house she also incidently completely confirmed the fact that every piece of wall paper and all that stuff was your house. .that's that's stuff that's over there. She's seen .., with her own eyes and she said that she couldn't believe it. .Mel took her around and gave her a grandtour of the new house and she said that. .how the hell could you be doin this? This looks exactly like the old piece the curtains the wallpaper the linoleum. .and he started laughing.

Marie. The linoleum in the kitchen is not like mine but it's cut the same way.

Indy. Well anyway. .um. .she. .she knows that.

Marie. It's pretty close.

Indy. Okay now. .now obviously what's gonna happen is this; and ah. .this is a risk that a. .you know one takes. .a carol going to obviously go and call him. .and tell him immediately say that I've turned over a bunch of stuff to Jack Anderson's people and Mel is gonna hit the roof. .How you know because he's not used to being conned this way.

Marie. She turned them over to you?

Indy. Yeah!

Marie. You got it?

Indy. You bet your life I got it.

Marie. Was I wrong?

Indy. You were right. You were A- 100% right.

Marie. I didn't read it but he was telling me about it. .I saw them lay-ing there but I didn't.

Indy. Oh but that that's what I'm saying you were right. .But so all I'm saying is all I'm saying is. .is that. .there's gonna be pressure.

Marie. Yeah.

Indy. Ahhh. .put on because. .you see ah. .you see every time she mentioned your name though.

Marie. Yeah.

Indy. But we were chatting we chatted for about 25 minutes. .Nice kid. .nice lookin kid you know. .medallion and everything. .we had coffee and and. .she kind of wondered what I was doing here and I. .I gave her a few tips I said you should look at the scam on the judge that was pulled by Tony and I said. .you know. .and your a friend of Tony's. .you can go back and check it out. .so she was kind of happy I gave her a few tips that I had. .that they were not National stories. .ah. .but she's gonna call. .call Mel. .and now ah. .everytime that she brought up your name. .I mean she was the one who told me that. .you know ah. .she said you know ah. .I understand this has happened. and I said. .I. .I. .I didn't even react.

Marie. Good.

Indy. When. .when your name was mentioned. .you know I. . .the obvious thing would have been to. .WHO MARIE. . .you no I don't. .you know none of that -crap.

Marie. Right.

Indy. I just a. .you know it was completely like. .you know the name just went by me. .and a. .I was very upfront and I said look a. . .as far as basic truth. .is concerned as far as an investigation is concerned. .I'm just convinced that this was the dirtiest thing that every happened to the U.S. Government. .and the more I look at it the dirtier it gets, and I'm not ganna back off it. .so but we parted friends now obviously I don't know what. .what Mel will tell her. .

Marie. I don't oh he. . .let me tell you something. .he could turn something so quick make your head. .I'm Indy. .you've never seen anything like this. He could sell ice cubes to an Eskimo. I mean it. I'm not exaggerating.

Indy. Yeah well. .that's

Marie. No I used to laugh and I used to think to myself (inaudible) and at the time he was pullin the biggest scam of all with me. Do you follow me? and I didn't wanna believe it. I said it couldn't be because it was so obvious. Why would. .you know I'm sure it got down to the point that I got up and I. .there's just too much coincidence.

Indy. Now there's one other thing that I'm trying to confirm. .and that. .th. .th. .that keeps kickin up like a sore thumb and I wanna. .I wanna see where I can go to confirm this. .that the lost. .the.the vanishing tapes. .the ones that vanished in the flight.

Marie. That was so long ago Indy. .after that happened they may have even. . .

Indy. Yeah but could there be a possibility that they were in the house? And Mel had left them there?

Marie. Where here?

Indy. Yeah

Marie. No. .no way. . Indy believe me Indy I went through this place with a fine tooth comb. .

Indy. No no at the time that he didn't actually tape. .take them. .because they might have been incriminating. .

Marie. I don't know. .I don't know. .I don't. .think. .he would do that. I don't think he would do that. He wouldn't come here with them. .Now remember that place up there was fixed up and a. .

Indy. Yeah but that. .was he in Long Island then or what? The story is. . .

Marie. Oh when that happened ah. .I think we were down here dear.

Indy. Alright he said they disappeared in a . .a. .during a plane flight. . .a. .we believe they were stolen from a flight bag.

Marie. Where was he goin to? where was the flight. . .

Indy. Okay the story says. .Chief Prosecutor in ABSCAM Admitted today that four tapes made by Mel Weinberg, while acting as a government undercover agent, disappeared or were stolen. There were not more than four audio tapes that were made by Mr. Weinberg and then disappeared during a plane flight. .Mr. Puccio told the court. .we believe that they were stolen from a flight bag Mr. Weinberg's making of tapes of telephone conversations with principals in the case. .a. .Puccio said the theft occurred last October. .aha. .and while the government did not know what was on the tapes. .he thought they dealt with aspects of the case other than the current trials of a . .Myers. Puccio made his remarks just before the trial began after Richard Ben-Veniste, lawyer for one of the defendants Howard Criden had failed to turn over many of the tapes.. complained that the FBI had failed to turn over the tapes..the tapes reportedly recorded incriminating conversations between the defendants and Weinberg..FBI agents posing as Arab businessmen etc...

Marie. It doesn't say we're there see?

Indy. Huh

Marie. It doesn't say where the flight was..but I'm almost positive that was when I was down here..that's when the same stink started..if you find the date of that thing..if it was anytime from a...79 on..a July..oh..it was way after July..ah it would have been down here..

Indy. Uh, uhm

Marie. Ah..I..it wasn't up north I'm almost positive of that..it was down here...

Indy. Did he have a lot of tapes over there at that time?

Marie. Well they were handling tapes back and forth..remember everything they talked was taped..when they got the tapes...

Indy. No but he..ha..had a whole bunch of stuff upstairs right?

Marie. What upstairs where here?

Indy. Yeah. When he was livin there.

Marie. No just downstairs we had that little answering machine..those tapes..the guys would come and pick them up..

Indy. Uh, uhm

Marie. You see they'd be in and out to pick up the tapes. But ah...the tapes were never left here any length of time. They'd be picked up..ah..these tapes..uh..the four missing tapes were not from the house these were on the plane..these were in luggage they were being brought from I think...somewhere from up in New York...remember they were taping up in New York too.

Indy. Ummm

Marie. They were travelling..Mel was always travelling..to New York..to Washington..back and forth..now where these tapes were made I think they were made somewhere up in New York..maybe in one of the Hotels, the meetings.

Indy. Uh, huh

Marie. Or..or somewhere

Indy. Well he never discussed that with you?

Marie. No..no..no..no..Nah he never went into detail with that. He..like he'd go on a trip...now...ah..as far as I know...he could have been in this house 16 miles away when he was telling me he was in New York Do you follow me?

Indy. Yeah

Marie. Because I didn't know about the house..

Indy. What does he have in that Condo though? What kind..does he have all his tapes and files and transcripts out there?

Marie. I don't know. He mentioned to me he's got it up at Couton's office.

Indy. Uh, uhmm

Marie. That lawyer's office..he's got a file thing under lock and key..and he was..he was specific about telling me that..but nine chances outa ten..he moved everything up into the Condo.

Indy. From where?

Marie. From the .. well anything that was in here.

Indy. Uh, huh

Marie. He's still got clothes here in the closet . . . he hasn't touched them .. but ah .. like I said he moved in with her .. when he was going out of here with clothes .. he was telling me he was goin up to New York or Washington .. He was actually I think goin up to that place .. bringing the clothes up there.

Indy. Uh, uhm

Marie. When he came back from the supposed trips .. you know I said where's the suitcases? you know where's where's your clothes? He says, oh well we leave them around, you know the guys keep hotel rooms in New York when we go up that we can stay .. we have rooms kept for us .. He says .. I got stuff all over . . . that was a lie. He was going up to the Condo .. up .. up .. up in Stewart.

Indy. Yeah, yeah.

Marie. Do you follow me?

Indy. Did but were the agents coming . . .

Marie. I don't I just found this out now .. all the time he was leaving on all these so-called trips ..

Indy. He this is where he was going ..

Marie. That's where he was going. Now he .. he never came down into this area .. to Palm Beach County .. he stayed in the next county .. I wouldn't have a chance to see him .. because he knows I don't run around during the day ..

Indy. Were the agents coming in dur .. when the trial had started? Or were the agents coming to the house then too?

Marie. Ah yes .. that was in the very begining .. now .. and then all of a sudden it stopped and that must be when these place up there was ready. That's when Lifestyle .. furniture guy was going up to see .. he said he's walk in .. he saw agents .. he said he never saw another woman ..

Indy. He saw agents .. and .. and JR saw their guns there right?

Marie. Not JR now .. the agents, .. the .. guy from the furniture store .. saw agents and guns all over the place. Always agents in the place.

Indy. In the new Condo?

Marie. Yeah, now Mel .. she was working full time so they were hangin out there during the day .. Now Mel .. would ah . . . come home and tell me .. He'd a got to pick JR up .. and take JR and spend a couple of days and nights .. and JR .. of course figuring thata .. the two of them are going somewhere up in Jackson beach or something .. Remember he was to .. he was—told me that there was a Sir Gordon up there. . . and he's helping him with a Condo.

Indy. Yeah, but there's no such person .. doesn't exist.

Marie. I know it doesn't that's her brother, her brother or a cousin of hers. There is a Gordon .. Robert Gordon .. I think the name is. Or Gordon ah .. whatever .. but he used that name .. okay. Now JR would go with him .. a lot of times JR wouldn't see her because she was working during the day.

Indy. Uh, uhm

Marie. So when JR did .. JR thought she was an agent. So JR wouldn't come home and tell me because Mel impressed upon him that I would be a nervous wreck. Alright?

Indy. Uh, uhm

Marie. So JR was afraid to get me upset .. he figured well his father's telling the truth .. but Mel never talked in front of JR and I together. That's why when everything came to a head Mel sent JR out again and I ran outside to grab JR . . . and I said you get inside . . .

Indy. Did they every discuss the cases?

Marie. Who?

Indy. Ah the agents and Mel? Oh what I mean when the trials were on in terms of . . .

Marie. Oh they . . . they . . . they . . . they talked but you gotta remember from that time on they were up there . . . or . . . they went up to the city or they went somewhere else . . .

Indy. While the trials were on I mean were they talking to each other.

Marie. Oh sure . . . sure they were still doin . . . remember every trial . . . that was on there was another case they had to do . . . work on . . . they were always constantly doing something . . . now even if they talked . . . I couldn't make out what they were saying because I didn't understand what . . .

Indy. No but I'm . . . what I'm trying to determine is . . . is . . . is whether any of these people are talking about you know . . . fixing their testimonies and covering up for each other when they lied . . .

Marie. They didn't do it in front of me . . .

Indy. But if I . . .

No way . . . if they did that they did it amongst themselves . . . now I'll be honest with ya there . . . they would never do that in front of me . . .

Indy. That there ah . . .

Marie. No they . . . they just a . . . oh no nothing like that.

Indy. You know on the a . . . the a . . the microwave that he gave her . . . is that a . . . a . . . different microwave is that a GE or?

Marie. No that's ah. .he bought her that one.

Indy. Yeah, . . . but that's the . . the slip that he gave to the agents right but did the agents actually know what he'd done?

Marie. I don't know. I don't know . . . see I don't know if he said anything to them or not.

Indy. No but when he got caught . . . when Plaza and Wier ah . . . made that report.

Marie. I don't know Indy. I don't know what he did. I really don't.

Indy. No but the slip that he produced from JC Penney . . .

Marie. That was for the microwave.

Indy. That was for the other one right?

Marie. Yeah.

Indy. But the other one is not the GE right?

Marie. No.

Indy. So did . . . did . . . did-.the agents question . . .

Marie. I never saw it . . . I never saw it. It may be . . . see I (Tape 7 cuts off end of Tape.)

(Tape 9.)

Marie. Cause ah . . the reason he didn't come by . . remember he thought he was just gonna float in and out but I told JR when he saw his father . . and ah . . I said . . . If your father asked anything about me I'm gonna ask you to do one thing . . you don't know.

Indy. Uh, uhmm

Marie. I don't wanna be discussed JR.

Indy. Uh, uhmmm

Marie. Alright? Otherwise I said I'm not telling you what to say but just keep me out of the conversation I'd appreciate it. What you do with your father is your business . . I'm not gettin in-between . . he's your father and I will not knock him as far as your concerned . . alright?

Indy. Uh, umnm

Marie. Which I wouldn't do . . I mean ah . . what the man did to me that's one thing . . I've got the child to think of . . and he's upset enough . . and ah . . he did it . . you follow me?

Indy. Absolutely. Of course.

Marie. I'm not hurting him, . . but ah . . well I gotta run out to the store.

Indy. Ok . . did he go out this morning at nine?

Marie. JR went out early . . and um . . Indy . . and ah . . my neighbor is back he just came back from Michigan so . . they came over they wanna take me out for lunch . . and I couldn't go with them . . I just couldn't sit there you know? So we were just chatting outside.

Indy. Anyway . . listen anything else that ah . . you can think of know . .

Marie. No but I'm gonna . . I'm gonna do some thinking tomorrow. I really am. I'm gonna sit down and start ah . . . start going over things from the beginning Indy. Really. That's the best way start from scratch.

Indy. It's a great idea.

Marie. Instead of jumpin all over the place.

Indy. Yeah otherwise you know you just . .

Marie. No I was very upset too . . and ah . . you know . . a . . it . . ah . . you know I'm startin to calm down a little bit.

Indy. Uh, umm. Anyway the a . . the a . . one thing . . anyway that a . . remember you said that's a one of the reasons I did call you . . was a that . . one of the things you insisted was that . . before I do anything . . was just . . you know . . just to confirm the Errichett thing . . and that's the only confirmation I get . . Now it's it's April and . . it . . it was that Mel came in a Lincoln Continental . . he got out of the car . .

Marie. Well see nobody was there to see him . . it was . . no I didn't see anybody . . there was no way you could you hadda come down this ah . . service road now this could a been a meeting . . maybe DeLorenzo wasn't there? Do you follow me? This may have been something strictly . . between Mel and him. That's what I'm thinkin . . because no way it was at a truck stop and I had a . . a Mark . . a Mark V . . Mark IV . . Mark V excuse me I had the Mark V at that time. . . .

Indy. Yeah that's what they . . that's what he said isn't it . . Lincoln Continental.

Marie. O yeah . . but not straight Lincoln . . see there's the Lincoln and there's the Marks . . you with the . . the thing on the back.

Indy. Uh, uhmmm

Marie. So ah..and I didn't see any..believe me I didn't see a soul..and there was no way..

Indy. No because you were waiting,..you didn't know where he'd gone.

Marie. Oh yeah but I knew where I came down the road and I knew where I was waiting..I wasn't near the ah..place..the entrance or anything. And nobody could have seen me because it's a..service road. I was on the service road..right up from it..nobody could a seen me there.

Indy. Uh, ummm.

Marie. That's what I'm sayin..

Indy. Okay..I was I was just saying a this was this has come a..directly from DeLorenzo..

Marie. Yeah, now that may have been another meeting with them that I

Indy. April 1, '79 is what they were a..

Marie. Maybe..you know..Mel—used my car once and awhile..he took my car once and awhile to drive it you know..if he was home.

Indy. But that Lincoln was your car though..

Marie. Yeah

Indy. Continental?

Marie. Yeah..I got rid of it when we moved down I didn't need a big car like that..

Indy. That's when you got you eh..Audi?

Marie. Yeah I got the small car as soon as I moved down here. I got rid of the Lincoln I got a good price on it cause it was in good shape..and ah..it paid for me to have a smaller car. I didn't want a big car. And thats what the argument was you know it's not a sharp car and it's not a you know..

Indy. But but there were references..before that meeting there were references made to the..to some kind of money deal right? 45,000 is what you remember right?

Marie. There was..the conversation was a slanted conversation for some purpose. It was definitely slanted and it was between Errichetti and him.

Indy. Then it was immediately after that that they had the meeting?

Marie. That's right..A short time after that.

Indy. What..same day?

Marie. Nooooo.oh.oh this was like weeks in between..this is all being..something being set up I guess..but that's about all I know..e.e.e.er..if thats what it was pertaining to you know.

Indy. How did you come up with the $45,000 figure.

Marie. Because that was the figure I heard.

Indy. I see.

Marie. That's why...oh

Indy. And the contacts basically was...

Marie. This was a long time ago too. But that thing sort of hit my memory. and then you know the more you think about something.. ther. could you be wrong..could it be 5 more or f...no..no..it always went back to that..

Indy. The 45

Marie. I don't know what it was about though.

Indy. And and it was for Mel basically.

Marie. No it was for somebody else.

Indy. Somewhat?

Marie. It was for somebody else.

Indy. Through Mel.

Marie. Right.

Indy. Do you remember who that other person was?

Marie. No I didn't . . . that's what I never knew. I never knew that. See that's what I'm saying . . . it's all ah . . . when you come down to it . . . what the heck was it? I don't know. I don't know. And I said that to you I didn't know who. That's the one thing I didn't know.

Indy. Anyway . . . think about it.

Marie. If I had paid attention.

Indy. Yeah

Marie. I would have known. But I never knew what was going on there. You know it got to the point where . . . if you hear another day of ABSCAM . . . you know what I mean?

Indy. Anyway . . . ah . . . think about it hon . . .

Marie. Alright . . . I am . . .

Indy. And ah . . . you know . . .

Marie. Have a good day tomorrow.

Indy. Yeah you too.

Marie. Alright

Indy. And I'll . . . I'll talk to you, later.

Marie. Okay darling.

Indy. Yeah . . . bye . . . bye.

EXHIBIT 12

PAYMENTS TO MELVIN WEINBERG
SUMMARY
JUNE, 1969, TO SEPTEMBER, 1982

	LUMP SUM	SERVICES	EXPENSES
New York Field Support Account	$ 10,000.00	$ 1,100.00	$ 2,903.98
ABSCAM	$ 93,500.00	$114,100.00	$ 19,645.19
GOLDCON			$ 7,332.79
Miami Field Support Account			$ 4,712.26
TOTAL	$103,500.00	$115,200.00	$ 34,594.22

PAYMENTS TO MELVIN WEINBERG
FROM THE NEW YORK FIELD SUPPORT ACCOUNT
FOR MATTERS OTHER THAN ABSCAM

DATE	LUMP SUM	SERVICES	EXPENSES
June, 1969			$ 100.00
December, 1969		$ 100.00	$ 50.00
November, 1970		$ 100.00	$ 50.00
February, 1971		$ 750.00	$ 250.00
May, 1975		$ 150.00	$ 50.00
June, 1977			$ 100.00
April, 1978	$10,000.00		
April, 1978			$ 160.50
October, 1978			$ 826.43
December, 1978			$ 500.00
February, 1979			$ 817.05
PAGE TOTAL	$10,000.00	$1,100.00	$2,903.98

PAYMENTS TO MELVIN WEINBERG
FROM THE NEW YORK FIELD SUPPORT ACCOUNT
FOR "ABSCAM"

DATE	LUMP SUM	SERVICES	EXPENSES
June, 1979	$15,000.00		
April, 1979	$ 5,000.00		
December, 1978	$ 2,500.00		
November, 1978	$ 5,000.00		
August, 1978		$ 600.00	
PAGE TOTAL	$27,500.00	$ 600.00	
PAYMENTS TO WEINBERG THROUGH ABSCAM NEXT PAGE TOTAL	$66,000.00	$113,500.00	$19,645.19
TOTAL PAYMENTS TO MELVIN WEINBERG FOR ABSCAM	$93,500.00	$114,100.00	$19,645.19

"ABSCAM" PAYMENTS TO MELVIN WEINBERG

DATE	LUMP SUM	SERVICES	EXPENSES
September, 1982			$ 559.18
March, 1982		$ 2,000.00	
February		$ 2,000.00	
January		$ 2,000.00	
December, 1981		$ 2,000.00	
November		$ 2,500.00	
October		$ 3,000.00	
September	$50,000.00		
August		$ 3,000.00	
July			
June		$ 3,000.00	
May		$ 3,000.00	
April		$ 3,000.00	
March		$ 3,000.00	
February		$ 3,000.00	
January		$ 3,353.40	
December, 1980		$ 5,646.60	
November		$ 3,000.00	$ 243.18
October		$ 3,000.00	
September		$ 3,000.00	$ 1,170.44
August		$ 3,000.00	$ 752.23
July		$ 3,000.00	$ 502.31
June		$ 3,000.00	$ 482.90
May		$ 3,000.00	$ 278.59
April		$ 3,000.00	$ 784.00
March		$ 3,000.00	
February	$10,000.00	$ 3,000.00	$ 604.13
January		$ 3,000.00	$ 4,024.33
December, 1979		$ 3,000.00	$ 982.53
November	$ 6,000.00	$ 6,000.00	$ 3,334.71
October		$ 3,000.00	$ 3,008.15
September			$ 722.15
August		$ 6,000.00	$ 1,796.36
July		$ 3,000.00	
June			
May		$ 3,000.00	
April		$ 3,000.00	
March		$ 6,000.00	
February		$ 1,000.00	
January			
December, 1978		$ 2,000.00	
November			
October		$ 2,000.00	
September			$ 400.00
August		$ 1,000.00	
July		$ 1,000.00	
PAGE TOTAL	$66,000.00	$113,500.00	$19,645.19

PAYMENTS TO MELVIN WEINBERG
THROUGH MIAMI UNDERCOVER OPERATION
"GOLDCON"

DATE	LUMP SUM	SERVICES	EXPENSES
March, 1979			$1,154.01
April, 1979			$1,309.18
May, 1979			$1,139.81
June, 1979			$1,424.42
July, 1979			$ 712.98
August, 1979			$ 433.58
September, 1979			$ 558.81
October, 1979			$ 300.00
November, 1979			$ 300.00
PAGE TOTAL			$7,332.79

PAYMENTS TO MELVIN WEINBERG
FROM THE MIAMI FIELD SUPPORT ACCOUNT
FOR MISCELLANEOUS CASES

DATE	LUMP SUM	SERVICES	EXPENSES
October, 1978			$ 382.55
October, 1978			$ 222.26
October, 1978			$ 11.78
November, 1978			$ 773.74
November, 1978			$ 375.80
December, 1978			$ 173.57
January, 1979			$ 77.62
January, 1979			$ 915.76
January, 1979			$ 182.38
January, 1979			$ 591.31
January, 1979			$1,005.49
PAGE TOTAL			$4,712.26

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

THURSDAY, JULY 22, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 318, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias, Huddleston, Rudman, Leahy, DeConcini, McClure, and Simpson.

Staff present: James F. Neal, chief counsel; and Malcolm F. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

This morning, the committee will hear testimony from two witnesses, Michael Wilson, who was the headquarters supervisor of the Abscam operation and John Good, who is the senior supervisor at the Brooklyn-Queens office.

Gentlemen, we are glad to have you here this morning. Do you have any preference as to which of you goes first—I [2] understand each of you would like to make a brief opening statement.

Mr. WILSON. I will start off.

Senator MATHIAS. Let me swear you both. If you would raise your right hand, please. Do you swear that the testimony you are about to give to this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. WILSON. I do.

Mr. GOOD. I do.

Senator MATHIAS. Have each of you received copies of Senate Resolution 350 and the committee rules?

Mr. WILSON. Yes, we have.

Mr. GOOD. Yes, Senator.

Senator MATHIAS. Please proceed.

STATEMENT OF MICHAEL WILSON, ASSISTANT SECTION CHIEF, PERSONAL AND PROPERTY CRIMES SECTION OF THE CRIMINAL INVESTIGATIVE DIVISION, AND JOHN GOOD, SUPERVISORY RESIDENT AGENT, FEDERAL BUREAU OF INVESTIGATION

Mr. WILSON. Mr. Chairman and members of the committee, for the information of the committee, I would like to provide by background and experiences.

My name is Michael D. Wilson. I am 42 years of age, and graduated from California State University in Hayward, Calif.

[3] Prior to my employment with the FBI, I was a Berkeley, Calif., police officer and a special agent with the Naval Investigative Service, Office of Naval Intelligence. I entered the Federal Bureau of Investigation as a special agent on April 6, 1970, and was assigned to the Mobile, Ala., Division in July of that same year. While in Mobile, I investigated bank robbery, theft from interstate shipments, and fugitive matters.

In July 1971, I was transferred from Mobile, Ala., to Newark, N.J., where I had the following assignments: bank robbery squad, 1971 to 1972; organized crime squad, 1972 to 1974; supervisor of the property crime squad, November 1976 to February 1979. I was also the top thief program coordinator from 1974 to 1976 in Newark.

The above assignments provided me with a background in personal and property crime cases, undercover operations, and the supervision of informants.

During February 1979, I was transferred to FBI Headquarters and assigned to the General Property Crimes Unit, Personal and Property Crimes Section, Criminal Investigative Division, with the assignment of administering those property crime investigations on the east coast to include 17 undercover operations, one of which was Abscam.

In February 1981, I was reassigned to the Inspection Division as an inspector's aide. On October 5, 1981, I was [4] reassigned to the Public Corruption Unit, White Collar Crime Section, Criminal Investigative Division, as a unit chief. On June 1, 1982, I was assigned to the Personal and Property Crimes Section, Criminal Investigative Division, as assistant section chief, the position I presently hold.

The substantive desk supervisor at FBI Headquarters, the role I held during the Abscam investigation, is the primary link between the field and FBI Headquarters. I was a collector of data and information, collater, and finally, the one who prepared summary documents with recommendations for action. The nature of the documents prepared can be a routing slip, notation on incoming communications, addendum to incoming communications, memorandum, or report. Each level of review and approval in the chain of command had the option to modify, approve, disapprove, or return for additional action each document prepared.

I am now prepared to be as responsive as I can to any questions that the committee may have.

Mr. Good. Mr. Chairman, I also have a brief description of my background and experience.

I am 46 years old. I am a graduate of Fordham University. I served in the U.S. Navy prior to coming into the FBI. I have been with the Bureau for over 25 years, and I have been an agent for over 20.

I am currently assigned as the supervisory senior resident [5] agent in charge of the Hauppauge Resident Agency, which is a subdivision of the New York Office. I have held that position since 1977.

Senator Mathias. Say that again, will you—Hauppauge.

Mr. Good. Hauppauge.

Senator MATHIAS. Yes. I have read the documents, and I have been curious to get that pronunciation just right.

Mr. GOOD. Prior to my assignment at Hauppauge, I was assigned to the New York Office of the FBI, where I held the following positions. I was No. 1 man to the special agent in charge of the Criminal Division. I was supervisor of the kidnaping, extortion, and major case squad; supervisor of the bank robbery squad; supervisor of the truck hijacking squad. Prior to becoming a supervisor, I was an agent assigned to the hijacking squad and also to the fugitive squad.

My tour of duty in New York began in 1966. Prior to this, I was assigned to the El Paso Office of the FBI, where I worked general criminal matters, and my primary assignment was in Juarez, Mexico.

I attended the Defense Department Language School in Monterey, Calif. My first office as a special agent was in Springfield, Ill. During my entire career, I have worked in the criminal field and have been heavily involved in informant development, both as a supervisor and a special agent. I have been involved in one capacity or another in **[6]** at least seven major undercover operations and numerous short-term undercover operations. Over the years, I have been involved in several major prosecutions in the New York area and have testified extensively. I was a field supervisor responsible for the day-to-day activities of the Abscam investigation, from its inception to the present day.

Thank you, sir.

Senator MATHIAS. Thank you very much.

Counsel?

Mr. NEAL. Thank you, Mr. Chairman.

Mr. Wilson, let us start with you, because I think you can put on the record your activities perhaps in a shorter period of time than Mr. Good can. Tell us, if you will—and just take one criminal section of the FBI and tell us the hierarchy.

Mr. WILSON. Well, I will start with the division I am in, the Criminal Investigative Division. It starts with the field supervisors being the lowest link in that chain of command—I am sorry—not the field supervisor, but the headquarters supervisor.

Mr. NEAL. And that was you, during Abscam?

Mr. WILSON. That is correct.

Mr. NEAL. All right.

Mr. WILSON. From that position, it goes to Unit Chief, Assistant Section Chief, Section Chief, Deputy Assistant Director, Assistant Director of that Division, and **[7]** once outside of the Division, it goes to Executive Assistant Director, and then to the Director of the FBI.

Mr. NEAL. Let me see if I understand that. You, during Abscam, would be the lowest level of that hierarchy at FBI Headquarters in Washington?

Mr. WILSON. That is correct.

Mr. NEAL. All right. Now, up from you would be Unit Chief. Now, what do you mean by Unit Chief?

Mr. WILSON. That would be a person responsible for the unit. In my case, I was assigned to the Property Crimes Unit of the Criminal Investigative Division——

Mr. **Neal**. All right, now, hold on just a moment, there. That is what you mean by the substantive unit?

Mr. **Wilson**. That is correct.

Mr. **Neal**. Property crime.

Mr. **Wilson**. That is correct.

Mr. **Neal**. There is also a Personal Crime Unit.

Mr. **Wilson**. That is correct.

Mr. **Neal**. There is also a White Collar Crimes Unit.

Mr. **Wilson**. That is incorrect. There is a White Collar Crime Section.

Mr. **Neal**. A White Collar Crime Section?

Mr. **Wilson**. That is correct.

Mr. **Neal**. To the extent you can tell us, what other substantive units would be on the same level?

[8] Mr. **Wilson**. Well, let me start from the section I was in. I was in the Personal Property Crimes Section. Within that section are the Personal Crimes Unit, the Property Crimes Unit, the General Government Crimes Unit, and the Fugitive Unit. That is within the Personal Property Crimes Section. Now, in the White Collar Crimes Section, you have three other units: the Public Corruption Unit, the Governmental Fraud Unit, and the Financial Crimes Unit. In the Organized Crime Section, you would have units, also; in the Civil Rights and Applicants Section, you would also have units, and so forth.

Mr. **Neal**. All right. Moving up, then, from you, the lower-lower level at the FBI Headquarters, the headquarters supervisor, you would move up to the Unit Chief of a unit—in this case, the Property Crimes Unit.

Mr. **Wilson**. That is correct, yes, sir.

Mr. **Neal**. The next, or the third level, then, would be the Assistant Section Chief.

Mr. **Wilson**. Yes, sir.

Mr. **Neal**. And he would assist the Section Chief, I guess?

Mr. **Wilson**. That is absolutely correct.

Mr. **Neal**. Then, the fourth level up would be the Section Chief.

Mr. **Wilson**. Yes, sir.

[9] Mr. **Neal**. And that Section Chief would be in your case the Personal and Property Crimes Section——

Mr. **Wilson**. Yes, sir, that is right.

Mr. **Neal** [continuing]. Would have these different things under it that you have just mentioned?

Mr. **Wilson**. Yes, sir.

Mr. **Neal**. Up from that would be a Deputy Assistant Director?

Mr. **Wilson**. Yes, sir.

Mr. **Neal**. Would he have several of these sections under him, then?

Mr. **Wilson**. That is correct.

Mr. **Neal**. In other words, under him would be a Section of Personal and Property Crimes, a Section of Organized Crime?

Mr. **Wilson**. Well, it is not set up that way, but you are correct in stating that there would various sections. In our particular case, we had two deputies, one that was in charge of the White Collar Crime Section and the Organized Crime Section, and the other

Deputy was in charge of the Personal Property Crime Section, the Civil Rights and Applicants, and Terrorist Sections.

Mr. NEAL. All right. Then, up from the Deputy would be the Criminal Investigation Division Assistant Director?

Mr. WILSON. That is correct.

Mr. NEAL. And that Criminal Investigation Division [10] Assistant Director would have under him, am I correct, practically all of the sections dealing with the investigation of alleged violations of Federal law?

Mr. WILSON. That is correct.

Mr. NEAL. That would include, then——

Mr. WILSON. That is criminal investigations, now.

Mr. NEAL. Criminal investigations?

Mr. WILSON. Yes, sir.

Mr. NEAL. That would include, then, general government crimes, personal crimes, property crimes, organized crime, white collar crime—all of this.

Mr. WILSON. Yes.

Mr. NEAL. At the present time, I believe Mr. Revell, who is with you, is the Criminal Investigation Division Assistant Director. Am I correct on that?

Mr. WILSON. That is correct.

Mr. NEAL. All right. And up from the Criminal Investigation Division Assistant Director, you are then up in the top office, there, the Executive Assistant Director?

Mr. WILSON. Yes, sir.

Mr. NEAL. That was held in the recent past by the man who testified yesterday, Mr. Mullen?

Mr. WILSON. That is correct.

Mr. NEAL. And then, of course, the final rung is the Director himself.

[11] Mr. WILSON. Yes, sir.

Mr. NEAL. So up from you, you are telling us that you would have seven layers above you?

Mr. WILSON. Within that Division, yes.

Mr. NEAL. And if you got information in, the information you would pass up could go through all those levels?

Mr. WILSON. Yes; it could.

Mr. NEAL. During Abscam, Mr. Wilson, it is my understanding that your job was to receive information from the field.

Mr. WILSON. Yes, sir, it was.

Mr. NEAL. In Abscam, you would receive your information, then, primarily from Mr. Good, is that correct?

Mr. WILSON. That is correct.

Mr. NEAL. Mr. Good at that time—and we are talking now about the period of Abscam—Mr. Good at that time was then the field supervisory agent——

Mr. WILSON. That is correct.

Mr. NEAL [continuing]. Handling the day-to-day operations of Abscam.

Mr. WILSON. Absolutely correct.

Mr. NEAL. And then, you would get your information from Mr. Good, and then you would put it in some sort of permanent form, written form, and you would pass that on up the line?

[12] Mr. WILSON. On most occasions, yes.

Mr. NEAL. All right. We have seen in the file mainly the following information flow. There will be something called an Air-Tel coming in from what is called the Brocklyn-Queens Office, to Director, FBI. Do you understand what I am saying?

Mr. WILSON. Yes.

Mr. NEAL. This will be a teletype information.

Mr. WILSON. We differentiate between a teletype and an Air-Tel. They are two different communications that we use. An Air-Tel is a communication that does not have the immediacy as does a teletype, and what you are talking about, I think, are the teletypes.

Mr. NEAL. I am talking about the teletype. All right. Now, even though the teletype would say it is to the Director, it would come to you?

Mr. WILSON. That is correct.

Mr. NEAL. Now, to make this more meaningful for the committee and for the record, these teletypes, insofar as we are concerned here, would be composed in the field by Mr. Good?

Mr. WILSON. By Mr. Good or somebody who worked for Mr. Good, yes.

Mr. NEAL. Under his responsibility?

Mr. WILSON. That is correct.

Mr. NEAL. All right. These teletypes, as we have seen in [13] many, many instances, would be in substance as follows:

> We are conducting this undercover operation known as Abscam. We have been told by Joe Silvestri that Congressman B, or Senator A, will meet with us, will take a bribe of $50,000, in exchange for which he will sell his office. He will provide—he will introduce a private immigration bill to give the sheik asylum here. We are requesting authority to offer this Senator A or Congressman B $50,000, and Puccio, Strike Force Chief, concurs, provided he makes the proper assurances.

Now, have I accurately recited, insofar as is relevant here, what those teletypes would show?

Mr. WILSON. In substance, for those that were requesting moneys for a bribe, yes.

Mr. NEAL. Other teletypes or Air-Tels, would simply be information on what happened thereafter if a bribe offer was authorized——

Mr. WILSON. That is correct.

Mr. NEAL [continuing]. Or other flow of information could be the request for additional funding, which would recite what had happened, you thought, up to date?

Mr. WILSON. That is correct.

Mr. NEAL. OK, I know there are many different types of these things. I am dealing with one particular aspect here. Now, once that came in to you—by the way, would this be preceded by anything? I mean, this is a document now that [14] we are dealing with. Would you be talking to Mr. Good?

Mr. WILSON. Certainly. On many occasions, if not all, it was preceded by a telephone call.

Mr. NEAL. Would he relay basically the same information to you in a telephone call?

Mr. WILSON. He certainly would. As a matter of fact, it was requested. We wanted to know what these people knew when they were coming to these meetings, through the representations of the middlemen.

Mr. NEAL. Would you do anything to memorialize the telephone call, or would you wait for the teletype?

Mr. WILSON. We would wait for the teletype, indicating that the teletype should have everything in it that transpired in the telephone conversation.

Mr. NEAL. All right. What would be the difference—once you got a telephone call, how long would it be before that would be followed by a teletype?

Mr. WILSON. It would be immediately.

Mr. NEAL. Immediately—do you mean the same day?

Mr. WILSON. I would hope so.

Mr. NEAL. So, he might call you at 10 o'clock, and you might get a teletype at 12?

Mr. WILSON. I could have——

Mr. NEAL. I am not trying to pin you down. I mean, there was a short timespan there.

[15] Mr. WILSON. Within the day, that is correct.

Mr. NEAL. All right. Now, once you got the information—and let us take, now, that type of communication as I have summarized, where you are saying that Joe Silvestri, middleman, guarantees that Senator A or Congressman B will come in and accept a bribe of $50,000 for the misuse of his office in various ways, and that the strike force attorney concurs, provided the proper assurances are given. What do you do?

Mr. WILSON. I would prepare a memorandum at the same time requesting that support personnel would conduct an indices check on the particular person whose name was mentioned.

Mr. NEAL. Now, you would do two things.

Mr. WILSON. Well, I would do more than that. Depending on the period of time within the case itself, we——

Mr. NEAL. I am sorry. Would you start again?

Mr. WILSON. I said I would do more than that.

Mr. NEAL. Well, tell us exactly what you would do in headquarters once Mr. Good made this communication and request to you, or to headquarters.

Mr. WILSON. I would prepare a memorandum stating what was on the teletype and requesting or recommending that the bribe payment be paid. I would have one of the support personnel conduct an indices search for me on the name of the person who was identified in the communication.

Mr. NEAL. The putative target?

[16] Mr. WILSON. That is correct. At the same time, when the investigation got into the congressional area, we had books that gave us background on the Congressman, and we had a pictorial directory also, to insure that whoever was identified as coming to that meeting was in fact that person.

Mr. NEAL. Was that before or after the "Noto" incident,

Mr. WILSON. That was before the "Noto" incident.

Mr. NEAL. OK. So you would do three things, I gather, then. You would take the information in this teletype and the request for authority to make a bribe offer; you would put that in the form of a memo.

Mr. **Wilson**. That is correct.

Mr. **Neal**. And you would—you, personally, would make a recommendation?

Mr. **Wilson**. Yes, I would—based on the recommendation that came in from the field.

Mr. **Neal**. Did you ever change Mr. Good's recommendation, or did you pretty much follow that on? Can you ever give us one instance, for example, when you ever—I do not know whether you "overruled" is the word or not——

Mr. **Wilson**. There were occasions where I overruled things. I do not think any of them were on this type of communication.

Mr. **Neal**. OK. On the request by Mr. Good to offer a bribe to Senator A, Congressman B, public official C, or [17] private citizen D, you never overruled Mr. Good in Abscam?

Mr. **Wilson**. I cannot recall.

Mr. **Neal**. You cannot recall any instance in which you ever overruled him?

Mr. **Wilson**. That is correct.

Mr. **Neal**. Has it ever occurred when you recall it?

Mr. **Wilson**. My recommendations would generally follow that which came in from the field. I cannot recall any instance in which I overruled him.

Mr. **Neal**. OK. That is one thing you did. Now, the memo you would prepare—and we have seem these—would be a memo—I have read so many of them that my eyesight is not as good now as it was when I joined the staff here—they are mainly Gow to Mullen memos.

Mr. **Wilson**. That is correct.

Mr. **Neal**. And Gow may be in the courtroom—he is now the SAC in Knoxville, I believe. But at that time during Abscam, he was the section chief.

Mr. **Wilson**. Yes, he was.

Mr. **Neal**. And that is the third level up your hierarchy. The section chief, and he would be section chief of personal and property crime?

Mr. **Wilson**. That is correct.

Mr. **Neal**. Because that is where Abscam started originally, as a personal and property crime case?

[18] Mr. **Wilson**. Yes.

Mr. **Neal**. And it stayed in that Division, notwithstanding the fact that it ultimately changed to a political corruption case?

Mr. **Wilson**. That is correct.

Mr. **Neal**. OK. So you would prepare one of these Gow to Mullen memos.

Mr. **Wilson**. That is right.

Mr. **Neal**. And it would contain——

Mr. **Wilson**. Now, keep in mind that as soon as I got the teletype, then I would also advise my superiors that this had come in, or any phone call that I would receive, I would advise them also that it was coming. So there were discussions going on.

Mr. **Neal**. OK, discussions back and forth. But the approval document was a Gow to Mullen memo.

Mr. **Wilson**. That is correct.

Mr. NEAL. You would recite—you would give every case, almost, a little, brief synopsis of what Abscam was about, and then you would prepare a recommendation——

Mr. WILSON. That is right.

Mr. NEAL. You would prepare some sort of a stamp, it looks like to me, for various people to sign off on this document and approve it or disapproving it——

Mr. WILSON. That is correct.

[19] Mr. NEAL. And then you would have details. In the details, you would say basically what was passed on to you by Mr. Good in its primitive form——

Mr. WILSON. That is correct.

Mr. NEAL [continuing]. That is, "Silvestri says that Senator A, Congressman B, public official C, will take a bribe for $50,000, and for that he will sell his office, provide asylum. Mr. Puccio concurs, provided the proper assurances are met."

Mr. WILSON. That is correct.

Mr. NEAL. And you would recommend that that be done?

Mr. WILSON. Yes, sir.

Mr. NEAL. OK. That is one thing you would do, and that would start up the chain, then, from Gow to Mr. Mullen?

Mr. WILSON. That is correct.

Mr. NEAL. All right. The next thing you would do, you say—or, I am not saying sequentially, you would do them, but you do it—you would then ask for an indices check.

Mr. WILSON. That is correct.

Mr. NEAL. Now, describe for the members of the committee what an FBI indices check is.

Mr. WILSON. What I was looking for was any information we had in our FBI files on the named person. So I would contact the support person, and they would do that for me through the Identification Division. What would return [20] would be—could, if there was anything there—a large number of classifications, which would lead me to believe that there were some case files on the person, and then we would pull the files for review.

Mr. NEAL. To determine if you had any derogatory information, or complimentary information——

Mr. WILSON. Any pertinent information.

Mr. NEAL [continuing]. That would help the Director or the Assistant Director make a decision whether to go forward in this case?

Mr. WILSON. That is correct.

Mr. NEAL. All right. Now, let me tell you something that bothers, I think, everybody, and this may be inevitable—OK.

Mr. WILSON. Yes.

Mr. NEAL. Let us say 2 years from now, you have another Abscam-type situation, and you are running an indices check to determine whether there is something less than complimentary about a proposed target. I think the thing that bothers people—as I say, it may be inevitable—but would you pick up, then, the name of Senator A, about whom somebody said would take a bribe in the Abscam thing and say, "Aha, here is something"—or not you, but you know, you will not be there forever, unless you have got some special dispensation. Would somebody in your position go through an indices check, and since the name has been mentioned, let us just go ahead with it. Would you [21] go through that indices check—somebody go through that indices check—and would he pick up the name of a Senator Larry Pressler and feed it back to that person and say "Aha, somebody has said in the past that he would take a bribe"?

Mr. **Wilson**. I would hope that what would happen would be a complete file, explaining the situation, such as Senator Pressler's, and that it would explain it away, and that it would not say just that, but it would explain the complete situation.

Mr. **Neal**. That is a problem, isn't it?

Mr. **Wilson**. That would be maintained in our files.

Mr. **Neal**. OK. Let us suppose that—you know there must be a thousand tapes of Abscam, right——

Mr. **Wilson**. At least.

Mr. **Neal** [continuing]. And you know as well as I do that on all those tapes, there are statements by middlemen that Senator A, Congressman B, public official C is corrupt and will take a bribe. And sometimes, they go on for lengths about one of these people as to what the awful things are, right?

Mr. **Wilson**. That is correct.

Mr. **Neal**. Now, I suppose an agency will go through those tapes, and they will extract names from those tapes.

Mr. **Wilson**. Quite possible.

Mr. **Neal**. And those tapes are on file.

Mr. **Wilson**. That is right.

[22] Mr. **Neal**. I think the thing that may bother people is that this thing can be a piggybacking sort of thing, so that the next Abscam that comes along, even though you may not be there, somebody will get a bum rap, because in the files there is this allegation by a corrupt middleman and nothing else.

Mr. **Wilson**. Mr. Neal, there is always that possibility, but I hope that would not happen here. There is more information in our files than just a transcript, and the information is such that it shows that a lot of this is puffery, and that would also be in the file.

Mr. **Neal**. In other words, it may be in the files the fact that this was absolutely a lie?

Mr. **Wilson**. That is correct.

Senator **Huddleston**. Would counsel yield——

Mr. **Neal**. Yes, sir.

Senator **Huddleston** [continuing]. And inquire himself, or I will, how long these files are maintained by the Bureau?

Mr. **Wilson**. Well, right now, for an extended period of time because of a court order. But I could assure you on the Abscam case for an extended period of time; indefinitely, probably.

Senator **Huddleston**. So, they will be there forever——

Mr. **Wilson**. They will be there after I leave, certainly.

Senator **Huddleston**. Is there any process within the [23] agency at the present time to purge files where you do pick up information like this about an individual that, even after the statute of limitations has run out, they could not possibly be of any great use, but still remain there, and may always be subject, then, to public disclosure, and could be very damaging to an individual when actually, there was nothing there to merit any damage——

Mr. WILSON. That is very difficult to answer. I suppose that could happen. I would hope not, but certainly, there is always that possibility.

Senator HUDDLESTON. Thank you.

Senator RUDMAN. I think it is difficult to hear you, and if you would bring the mike much closer, I think it would be more helpful.

Senator HUDDLESTON. I might point out that the retention and disposal of the files were, of course, matters of serious concern, and the Intelligence Committee and others were considering charters and whatever for the FBI and other agencies, and I think it is really a serious question and one that needs to be addressed.

Mr. REVELL. Might I add just a little bit to what Mr. Wilson has said——

Mr. NEAL. Excuse me a minute. Mr. Revell, may I explain the understanding that we have had here, for the benefit of the members? Mr. Wilson and Mr. Good have made it plain to me—and [24] I guess we all accept that—I hope so—that they are fact witnesses, and that if there are any policy questions, Mr. Revell would be the one in his capacity to answer them.

Excuse me.

Mr. REVELL. May I address that, Senator?

Senator MATHIAS. Certainly.

Mr. NEAL. Surely.

Mr. REVELL. Our files, both in the intelligence area and the criminal intelligence area, do have a great deal of uncorroborated information. Of course, that information is always evaluated on the basis of how it was received, the credibility of the source, whether it was later proven to be correct or incorrect. So just the fact that an index card will show the name of a public official has no meaning to the substance of the case at all; it is what is in the file in its totality.

Now, the next step in this process and in all of these cases is a correlation memo. That correlation memo extracts from all of our files the information that is there, and of course, what steps have been undertaken to determine the accuracy of that information—where it has been disseminated, whether it resulted in any prosecution, or whether it was declined, or whether it never met the test of a substantive investigation.

So it is not just a name in a file with an allegation. [25] There is a great deal more information, and that is what is extracted from the files through correlation memos or through other types of research that is considered in the process.

In the case of whether or not you would go forward with a bribe of a public official, we would have all the information in our files, and we would, of course, know if that information had proven to be incorrect.

Now, as far as the destruction aspect is cencerned, we have a destruction program. It calls for destruction of criminal files, except in extraordinary circumstances, after a 10-year period. We are under a court order now, which restricts our file destruction. In cases of the significance of Abscam, Watergate, and others of national prominence, the general procedure would be that the files would be retained for historical purposes and, of course, for responding to litigation.

Senator HUDDLESTON. Let me just say that I can confirm pretty much what you indicated. I have seen my own file from several years ago—I do not know what is in it now. But we did take advantage of the opportunity in order to get a picture of what is in the files, and I must say that it is startling to see how many times your name may have popped up in various places. But there was a pretty thorough explanation of every situation in that case. The problem that I see is if you had the whole thing maybe released publicly, fine, but if someone had access to it and would release only selected [26] portions—the fact that some name may have popped up in a criminal investigation someplace—then it could be a serious problem to an individual who may be totally innocent.

Mr. REVELL. Of course, we would not release file material, except in court, or subject to the Freedom of Information Act.

Senator HUDDLESTON. I know you do not voluntarily release it, but sometimes things have a way of getting out, even from your shop.

Mr. NEAL. Senator, you have more courage than I do. I have never had the courage to ask for my file, and I am not sure I want to read it.

Senator HUDDLESTON. Well, I will tell you how it came about. We were dealing with this subject in the committee, and the committee determined that it almost had to see a file to know what it was talking about, and of course, the Bureau was not enthusiastic about us looking at files, but we finally resolved it by having an individual look at his own file only. So we did not violate anybody else's confidence, and it worked out pretty well.

Mr. NEAL. May I proceed, then?

Senator MATHIAS. Yes.

Mr. NEAL. The problem with your correlation statement, Mr. Revell—and anybody can answer this—isn't it a fact that in Abscam, you never prepared correlation memos until January [27] 1980, which was after Abscam was essentially over?

Mr. WILSON. I would like to answer that. That is not correct. What is correct is, yes, the dates on the correlation memos are January of 1980. They were requested in September of 1979, and there are a number of FD 160 forms pulling those files for that purpose. It may not have been complete until that date, but the process was in order.

Mr. NEAL. OK. You will grant me, though, will you not, that for someone who has reviewed the FBI Adscam files, you will see the correlation memos pulling all this together are dated in January of 1980?

Mr. WILSON. No question about it.

Mr. NEAL. All right. But it is your testimony that the information was pulled together, although not memorialized, earlier than that?

Mr. WILSON. That is correct. I would like to make it clear that because of the files, it was my decision not to memorialize at that particular period of time, and we did it later.

Mr. NEAL. OK. Now, then, one question that the Senators have and the ones we have gone over here yesterday—you do the indices check, but the truth of the matter is, isn't it, that in Abscam at least, irrespective of what that showed, you would authorize—if a corrupt middleman says that Senator A or Congressman B will take a bribe and will come to a certain [28] meeting, you authorize?

Mr. Wilson. That is correct.

Mr. Neal. Now, then, that is two things you did. You prepared the Gow to Mullen memo and the indices check—and you said something else, but I have forgotten what that third thing was.

Mr. Wilson. Well, there were a couple of things. We also had some books on the backgrounds of the congressional people, as well as a pictorial guide that we provided a copy of to the field so they knew that the person that was coming was in fact that person.

Mr. Neal. These books, can you tell us more about that? Are these books of general information, like "Who's Who" and that sort of thing?

Mr. Wilson. That is correct.

Mr. Neal. OK. So that does not have any confidential information, the book you are talking about?

Mr. Wilson. No, sir, it does not.

Mr. Neal. Now, then——

Senator Huddleston. Excuse me. I just want to ask, does the agency contribute to the contents of these books?

Mr. Wilson. These are the books with the identities of the staffers and——

Senator Huddleston. Just the regular books that are put out here, the staff directories, the journals, and whatever?

[29] Mr. Wilson. That is correct.

Senator Huddleston. I just wanted to make sure you were not using files that may have been passed along from past regimes.

Senator McClure. I must say that they surely must have noted that some of those pictures that are submitted have no relevance at all. They are 20 or 30 years old. [Laughter.]

Senator Mathias. Mr. Neal?

Mr. Neal. Yes, sir. The other thing that interests me and I guess you ought to address, you do an indexes check; we talked about that. And at some point, you started correlating information. I did not see any of this in the Gow to Mullen memos, however. In not one, single case did I see anything from other sources, good or bad, about a Senator, a Congressman, a public official, et cetera.

Mr. Wilson. I do not think that is entirely true. There may have been a couple with some information like that in them, but for the most part, that information was not in there. That was verbally given to my superiors.

Mr. Neal. To your superiors. Now, when you prepared the Gow to Mullen memo, you were preparing a memo from a man two or three levels higher than you to a man considerably higher. Your contact was simply with your assistant section chief?

Mr. Wilson. No. I walked the memo through.

[30] Mr. Neal. You walked it through yourself?

Mr. Wilson. That is correct.

Mr. Neal. All the way up to the Director, if that is where it went?

Mr. Wilson. If that is where it went.

Mr. **Neal**. And I noticed on a number of these memos that a great many people signed off on them as approving them; correct?

Mr. **Wilson**. Yes, sir, that is correct.

Mr. **Neal**. Now, when you got this information from Mr. Good, and you started to relate that information up the chain, did you ever inquire of Mr. Good, "Mr. Good, how do you know this? What is your basis for this?" In other words, did you attempt to interrogate Mr. Good as to his basis for his recommendation?

Mr. **Wilson**. Certainly. We were always evaluating the information to find out where he was getting it from, who was saying this.

Mr. **Neal**. "We"—now, wait a minute. You were the one dealing with him. What did you do? Let us take the man who has been mentioned a great deal, the Senator we talked about. What did you do in that case?

Mr. **Wilson**. The Senator we talked about? You are going to have to——

Mr. **Neal**. Well, the name has been public, hasn't it? Senator Pressler, on November 6, 1979, and with a very brief [31] period of time involved, and with no write-up at all, really, apparently, you sent up the line a recommendation that he be brought in before the cameras and offered a bribe. Now, where did you that information?

Mr. **Wilson**. I got that from Mr. Good, but I got that in a period of time that was so quick. We had 30 minutes—in fact, we did not even get results of any indexes check on that because it was so quick.

Mr. **Neal**. Why did it have to be so quick, Mr. Wilson?

Mr. **Wilson**. It was my understanding from Mr. Good that a change had taken place with Mr. Silvestri, and the person that he was going to bring was not available, and he was bringing Senator Pressler.

Mr. **Neal**. Well, did you think that Senator Pressler was going to dematerialize, or something or other?

Senator **Leahy**. "Beam up" is the expression.

Mr. **Neal**. You know, I could understand that in the search of an automobile or in the case of narcotics, that something may disappear or be forever lost, but why in this case? Why was it so quick?

Mr. **Wilson**. What are we talking about is that information relative to a Senator, where a bribe has been requested to be paid to him because he will give assurances to do something, and we had 30 minutes before that meeting was going to take place.

[32] Mr. **Neal**. That is the timespan you had; from the time you got the information on Senator Pressler from Mr. Good until that meeting was going to take place, you had 30 minutes.

Mr. **Wilson**. That is the timespan I said that I had.

Mr. **Neal**. And you actually thought it was necessary to go in 30 minutes and to do that?

Mr. **Wilson**. We had no control over that.

Mr. **Neal**. Well, you—you could have waited. You could have said, "Let us think about this a little bit. This is hurrying up too much."

Mr. **Wilson**. The problem was that it was already in motion. There was nothing I could do to control that. Apparently, he was already on his way.

Mr. NEAL. We will talk to Mr. Good about that, then. In 30 minutes, though, in 30 minutes from the time you got the information on Senator Pressler—well, 30 minutes from the very time the FBI Headquarters had the information on Mr. Pressler, you had authorized a bribe offer, and he was in before the cameras?

Mr. WILSON. I had recommended that it be authorized. I took it through the levels. It was authorized, and he was apparently at the residence.

Senator RUDMAN. Mr. Chairman, if Mr. Neal would yield just for one question, because I did follow this line of questioning yesterday, and I think it is a good time in the [33] record to ask the question, rather than wait an hour from now.

Senator MATHIAS. Yes, sir.

Senator RUDMAN. Mr. Wilson, at the time you had the communication with Mr. Good, were you aware of the fact that Mr. Silvestri had never met Senator Pressler, had never talked to Senator Pressler; were you aware of that?

Mr. WILSON. No; I was not.

Mr. RUDMAN. OK, thank you.

Senator MCCLURE. While we are in the pause, perhaps I could ask this question. Why didn't you just scrub the meeting?

Mr. WILSON. Why didn't I just scrub the meeting?

Senator MCCLURE. Why didn't you just say, "No, do not hold it"?

Mr. WILSON. Because it was already in motion.

Senator MCCLURE. So it was possible for it to be in motion, even without your approval—so that the safeguards that you say you had simply were not operating?

Mr. WILSON. Well, let me say this. I think that by the time Mr. Pressler got there, and with the respresentations made by Silvestri to me through Supervisor Good, we felt that it would be a meeting that should take place.

Senator MCCLURE. You thought it should take place?

Mr. WILSON. That is correct.

Senator MCCLURE. Even though you had not even checked the indexes?

[34] Mr. WILSON. The indexes were not relevant.

Senator MCCLURE. Are they ever?

Mr. WILSON. I think they are relevent. A lot of matters——

Senator MCCLURE. Did they ever make a difference to you?

Mr. WILSON. No; they did not.

Senator MCCLURE. So, you say you checked the indexes, but they are useless——

Mr. WILSON. I am not saying they are useless.

Senator MCCLURE. Well, useless from the standpoint of determining whether to go ahead or not.

Mr. WILSON. For this particular case, they were not relevant.

Senator MCCLURE. Is that true in the case of every Member of Congress?

Mr. WILSON. Is that true in the case of every Member of Congress——in this particular case, in the Abscam investigation?

Senator MCCLURE. Yes.

Mr. WILSON. Judge Pratt's decision, I think, shows you that the indexes checks would not be relevant in this particular case.

Senator McCLURE. But from your standpoint, the indexes were irrelevant——

Mr. WILSON. No. If I did not think they were relevant [35] for something, I would not have conducted them, and I did.

Senator McCLURE. You make the indexes check, and they are absolutely clear, and you still go ahead?

Mr. WILSON. In this particular case, we went ahead.

Senator McCLURE. In Abscam.

Mr. WILSON. That is correct.

Senator McCLURE. In all of the related cases of Abscam where a Member of Congress was involved?

Mr. WILSON. That is correct.

Senator McCLURE. Doesn't that meant it is irrelevant?

Mr. WILSON. Yes; it does.

Senator LEAHY. I just wonder if I might pause, just for a second, on what Mr. McClure was saying. What you are saying in effect is that you are willing to let the thing degenerate down to where a middleman, con man, anybody else, can determine what the FBI is going to do—determine whom they are going to investigate, how they are going to investigate it?

Mr. WILSON. I do not believe that. I think what happened here was the middlemen were making representations of people they could produce before an undercover situation that we had, and based on that, we certainly could not turn them away, and they brought them, and you know what we did from then on.

Senator LEAHY. But that is not so. In this case, you [36] let them determine whom you were going to investigate. They say, "Oh, by the way, we have got somebody in the car on the way out here; get going," and you say, "OK."

Mr. WILSON. That is not the information we had. They were coming; Mr. Silvestri represented that the person he was bringing knew why he was coming to the meeting, that he would make the necessary assurances, and that he would acknowledge or accept a bribe during the meeting, and that is what I knew.

Senator LEAHY. So in effect, he determined who you were going to investigate and in effect determined the investigation was going forward. You rubberstamped what he had done.

Mr. WILSON. I understand what was represented to me, and we went ahead with it.

Senator LEAHY. So, whoever he brought down there, he would have determined whom you were going to investigate.

Mr. WILSON. If he had made the representations as I had stated before.

Senator LEAHY. Does the FBI have similar freelance operations going on now involving Members of Congress?

Mr. REVELL. Senator, let me respond to that, since I am in charge of investigative operations. The answer is, they did not determine the course of our investigation. What they did determine, these corrupt influence peddlers, is whom we would meet. But when we met, and when we do meet, that does not [37] determine that we will pay a bribe, and I testified to that extensively on Tuesday. The bribe authorization is always contingent, and the final decision is not made by the middleman, it is not made by anyone in any corrupt position; it is made by the agent, based upon the criteria that is established as to whether or not he is authorized to proceed to pay a bribe, and that can only occur after the public official has acknowledged why he is there, what the intention of the meeting is, has indeed shown up for the meeting, has represented that he will commit a corrupt act, and is who he was represented to be. Then and only then is a bribe paid.

Senator LEAHY. I am well aware of your testimony earlier, and I listened to it and read it and listened to the questions afterward. But the point still remains that they would determine initially, certainly in this case, apparently in following the practice here, could determine initially who was going to be brought in. The person would not be brought in because of an FBI investigation that there is some corruption going on out there, and we want to be able to get proof of it here, but rather, almost somebody going through a Congressional Directory, somebody who really has no control, apparently, by the FBI, no real control, and "Here is a good name," pick them out, bring them down, and then tell you, "Look, the thing is under operation," and then you will come in and say at some point, "Yes, a crime has been committed, and we will go ahead [38] and prosecute." Well, of course——

Mr. REVELL. No, not prosecute.

Senator LEAHY. I mean, "We will recommend it for prosecution." Well, of course, we are not really expecting them to make the recommendation of prosecution, but it seems like it is the tail wagging the dog in this case.

Mr. REVELL. The corrupt influence peddler's position and contact with political figures, if we are dealing in a corruption case, can, through manipulation, generally arrange a face-to-face meeting. That face-to-face meeting does not mean that there is ongoing investigation. It means that there is the point at which we can determine whether or not the representations made by the corrupt influence peddler are in fact correct, and only at that point is a determination made whether or not a bribe should be paid.

Let me point out an analogy. If we are operating in an espionage situation, and we have a known agent of a foreign government, and he meets with an undercover agent, and he represents that a member of the National Security Council staff is available to sell secrets, we will go forward, and we will meet, under that context, with this staffer. But at that point, we will determine whether or not the representations are true or not true. We have not made a judgment as to whether or not the individual is, to any degree, criminally [39] culpable, because we have to ascertain whether or not the individual representation made by the foreign agent, the middleman, the person who does not know that we are law enforcement officers, are true or not true. We do not make that assumption until we have the evidence, and we get that from the face-to-face contact.

Senator LEAHY. Mr. Chairman, I have sort of intruded on the courtesy of the Chair already in going along on this, but this is an area I want to go back to. And I am tempted, because of a matter we had once before the Intelligence Committee, to follow up on what you just said on the other thing, but that is a matter of another investigation.

Senator **Mathias**. Members will have a round as soon as counsel has completed his examination.

Mr. **Neal**. Mr. Chairman, as far as counsel is concerned, I think it is just as helpful or interesting to have the questions asked when they come to your mind, so I have no problem at all with anybody just saying whatever seems right.

It might be good, while we are on this, Mr. Chairman, since both have been sworn, to just pick the point right now, and ask Mr. Good about this particular instance. Would that be permissible to the Chair?

Senator **Mathias**. Yes. Why don't we do that.

Mr. **Neal**. Mr. Good, tell us now, you understand that this Pressler name is mixed up with some other names that, **[**40**]** while bribes were authorized, they did not come in. Do you undertand what I am talking about?

Mr. **Good**. Yes, I do.

Mr. **Neal**. It has been the judgment of the committee to refer to these other people—and there are two others—as "Congressmen A and B." So would you use those names—Senator Pressler's name has been in the public domain, so there is no problem about that, but in responding to the questions, would you use "Congressmen A and B" in your testimony as to what happened in this instance?

Mr. **Good**. Yes, I will.

Mr. **Neal**. All right. Tell us now, then—just lay it out for us, what happened in the Pressler case.

Mr. **Good**. OK. This was a situation that arose—we were at the location——

Mr. **Neal**. At the location, that is the townhouse here in Washington that you were using as an undercover——

Mr. **Good**. Correct, expecting Mr. Silvestri to arrive any moment. We got a phone call from Mr. Silvestri, saying the individual who he was supposed to bring was tied up and could not make it.

Mr. **Neal**. Now, this is Congressman A——

Mr. **Good**. Correct.

Mr. **Neal** [continuing]. Or Congressman B?

Mr. **Good**. Correct.

[41**]** Mr. **Neal**. He was authorized to bring either A or B, as I remember.

Mr. **Good**. Now, I am not really clear on precisely that situation. We had authorization for him to bring somebody at that time. I do not know precisely who you are referring to with "Congressman A and B." But the situation was such that he was anticipated to arrive momentarily when a phone call came in; Mr. Amoroso received the call, and he told him that he was unable to bring the individual who he had previously advised us he was bringing, and that he had met this other individual whom he was acquainted with, and had assured us that the same ground rules applied, the man was fully aware of why he was coming, would accept the money, and promised to respond accordingly in receipt of the money.

Mr. **Neal**. Let me stop you right there now, if I may. According to the document I have, which is—and we are using different names here, because of restrictions of the Department of Justice—according to Senate select committee document 23, this man, Silvestri, had stated that, "Congressman A and Congressman B, for payments of $50,000 each, will promise to obtain political asylum for Yassir Habib," and authorization had been granted, based on Silvestri's word respecting Congressman A and B—two of them—that he would do this. Now he calls you up—all this is set up—Congressman A and B have been authorized to be offered bribes of $50,000 each, [42] based on his representation, and you all are out there at the townhouse and everything is set up for Congressmen A and B. Because of what this man has told you—he calls you up and says they are not coming.

Now, with respect to this particular man, I guess I have some concern about whether at this point you should have been relying on this man, because of past record. But in any event, he told you now that they were not coming. Did that cause you to have any lack of confidence in what he was telling you about Senator Pressler?

Mr. GOOD. Not at that particular moment, no.

Mr. NEAL. All right, but he told you then that, "Congressmen A and B are not coming," and you are set up. He says instead, Senator Pressler is going to come; he has made the same assurances.

Mr. GOOD. Correct and he would probably be a more powerful figure to——

Mr. NEAL. So he is elaborating a little bit. He is saying, "Forget those two Congressmen. I will bring Senator Pressler out, and for $50,000, he will sell his office?"

Mr. GOOD. Correct.

Mr. NEAL. Now, let us say quite clearly right now, that turned out to be totally, absolutely, completely false; didn't it?

Mr. GOOD. That is correct.

[43] Mr. NEAL. Right. If our investigation of the records is correct that call was at 11 a.m. on November 6, 1979, when the call came from—I am sorry, it was November 7, November 7, 1979—that call came in at 11 o'clock from Joe Silvestri to Amoroso.

Mr. GOOD. Correct. I do not have those records in front of me, but if that is the date you state, I will accept your word.

Mr. NEAL. Well, what I do know is that at 11:25, you called headquarters; right?

Mr. GOOD. I will accept your word. I do not have those records in front of me.

Mr. NEAL. Would it help you to show you a record?

Mr. GOOD. No. I accept your representation.

Mr. NEAL. OK. So sometime, then—did you immediately call headquarters, once Mr. Amoroso had received this call?

Mr. GOOD. Yes, I did.

Mr. NEAL. So, somewhere around 11:25 a.m., then, Silvestri called you at the townhouse while you are waiting for Congressmen A and B to appear and tells you what we have just gone over?

Mr. GOOD. That is correct.

Mr. NEAL. And what do you do then?

Mr. GOOD. I advised Mr. Wilson at Headquarters immediately of the change in plans and requested that he present [44] the situation to his superiors and advise me of the results.

Mr. NEAL. Did you tell him what you had been told by Mr. Silvestri?

Mr. **Good**. Yes, I did.

Mr. **Neal**. Now, did you talk to anybody else about that?

Mr. **Good**. Yes, I did.

Mr. **Neal**. Who did you talk to?

Mr. **Good**. I believe that John Jacobs, the strike force attorney, was present at the time in the townhouse, and he was fully aware of all the circumstances. He consulted with his superior, Tom Puccio, who was back in Brooklyn.

Mr. **Neal**. And what did Mr. Jacobs say?

Mr. **Good**. Their recommendation was to go ahead with the meeting.

Mr. **Neal**. Go ahead. All right. Did you know, when Mr. Amoroso received the call and when you made your call, when Senator Pressler was supposed to be there?

Mr. **Good**. The understanding we had, they were going to be there shortly.

Mr. **Neal**. And, according to the tape that we have all seen, the anticipated meeting was at somewhere around 1 o'clock——

Mr. **Good**. That is correct.

Mr. **Neal** [continuing]. Isn't that correct?

Mr. **Good**. I——

[45] Mr. **Neal**. You do remember that, don't you?

Mr. **Good**. I do not remember it precisely, but I accept your representation.

Mr. **Neal**. All right. It is on the tape that we saw. All right. Now, if Mr. Wilson is correct, you did not have much time—I am not trying to pin anybody down to the minutes, but you had maybe an hour, at best, to make that decision.

Mr. **Good**. That is correct.

Mr. **Neal**. All right. Now, the problem is that he did not appear at one, or around one, when he was supposed to appear. The meeting actually took place at three. Did you ever call back Mr. Wilson and say, "The time has been changed. Maybe we ought to think about this a little bit" or, "We have got some more time now. Let us give it some more thought"?

Mr. **Good**. I do not recall recontacting Mr. Wilson. I am sure that we had probably talked in the interim, but I do not recall any specific conversation to that extent, no.

Mr. **Neal**. Well, we really have, then, what happened in the Senator Pressler case. Is there anything that you want to add to that in any way, or subtract from it, or anything else? I will go on.

Mr. **Good**. Only that the recommendation came down, and we followed the approval that was given to us by Headquarters. It is a judgment call, and I think that we did the best we could under those circumstances.

[46] I mean, the ultimate safeguard was that Senator Pressler came in, he recognized the situation, we recognized the situation, and we resolved it to the best of our ability.

Senator **McClure**. Mr. Neal, would you yield just a moment?

Mr. **Neal**. Yes, sir.

Senator **McClure**. I do not mean to be nitpicky, but I am trying to get at what the perceptions were of the people that were involved in this decisionmaking process. You just said, "The recommendation came down." As I understand, the recommendation went up, and the approval came down.

Mr. GOOD. Correct.

Senator MCCLURE. All right. Thank you.

Mr. NEAL. Obviously—and this may be, as we said here before, one of the inevitable costs of this kind of operation, but this is something, I think, for the Congress to consider, and it may be inevitable, it may be an inevitable cost. But that 30 or 40 minute or an hour decision has certainly cost Senator Pressler an awful lot. That may be inevitable, it may be inevitable in these kinds of things.

Was there any considerations given—and in other cases, you had more time than this—was there ever any consideration given to, "Wait a minute, We are not in that big of a hurry." He did not produce Congressman A, and he did not produce Congressman B—and I could go through some others in the past he also did not produce that he said he could—did it occur to [47] you to say, "Well, maybe we are speeding this thing up a little bit. Let us slow this thing down. He is not going to disappear"?

Mr. GOOD. I do not recall us ever discussing that, no.

Mr. NEAL. But certainly, this was concurred in by a representative of the Department of Justice?

Mr. GOOD. That is correct.

Mr. NEAL. Does anybody want to ask anything else before we leave this?

Senator MCCLURE. I would like to get on the record at this point the prior record of success in your dealings with Mr. Silvestri, how many others had there been prior to this meeting?

Mr. GOOD. Mr. Silvestri, number one, was responsible for the introduction of Congressman Thompson. That was the initial credibility that he had. A member of his family was reportedly a ranking official in the Democratic Party in the State of New Jersey, which he had advised us was the source of a lot of his connections.

Senator MCCLURE. Had you verified that?

Mr. GOOD. We did verify that she was associated with the Democratic Party. I cannot recall what her exact position was.

Senator MCCLURE. Well, the problems I have——

Mr. GOOD. In addition, he had brought in another State [48] official who had accepted a bribe—I think that case was referred to yesterday—prosecution was declined in that matter. Those were the elements that we took into consideration.

Senator SIMPSON. Mr. Chairman, may I ask a question? In listening to it and perceiving the spirited way in which this was done with regard to Senator Pressler and the swiftness with which it was done, it almost seems to me that the successes that you had were so giddy, that the bait had so many hooks in it and had landed so many lunkers, that you just decided that here, you would just fish right on into the night. Is that the way, if I understand it?

Mr. GOOD. I would not put it quite that way, Senator. I think that the situation was such that had we not gone through with this, the credibility of the entire operation could possibly be put in question, and that was a serious consideration also at the time. Here, we had a man that we represented that we had money to pay to an official. He was bringing us an official. He calls us up and he tells us, "I have got a higher official who is going to do better for you." If we tell him, "No, do not bring him," I think he is going to look at us and say, "Hey, what are these guys really after?" You know, it is a real world situation you are dealing with. If we were real crooks out there and looking to bribe Congressmen, and somebody came to us and said, "I have a better fish for you," how can you say, "No, I do not need him," and still maintain [49] the credibility?

Senator SIMPSON. Well, it just seemed to me the batting average was good. You were getting about seven out of seven out of Errichetti and Silvestri was producing, and that you had kind of decided the safeguards did not quite mean what they did when you sat down, in a calm and contemplative manner, and put them together.

Mr. GOOD. Now, this was a disturbing situation, even at the time, and it gave a good deal of concern to all the people back at Headquarters. They did not like it. If we could have done it some different way, we sure would have.

Senator SIMPSON. Just one final question, Mr. Chairman. You are good to allow me to dabble in this, and I will come back to my regular time. But let me ask this—and this is the final one. Obviously, there has been a pile of litigation. We have had myriads of lawsuits in various jurisdictions, and most of it, successfully upholding the FBI; I think we could all say that. I want to ask just, on each occasion in the litigation, would you say that this issue that Counsel Neal pursues and all of us come back to, the safeguards issue and springing of the trap and so on, has certainly—has that been the most significant item probed in all the litigation?

Mr. GOOD. In the due process hearings and the trials that I have testified at and the other agents have testified at, it has been an unprecedented review of every stage of this [50] operation. I have never been involved in an investigation in my entire career where the files of the FBI have been turned over just completely to the courts. It has been reviewed from one end to the other.

Senator SIMPSON. So this is an old, old track, and the furrow is deeper and deeper as we go on with this, right here?

Mr. GOOD. That is correct.

Senator SIMPSON. Is that right, is that your view of it?

Mr. GOOD. That is correct.

Senator SIMPSON. Not one shred of newness or freshness or——

Mr. GOOD. I do not think I will answer a question here today that I have not answered probably a dozen times.

Senator SIMPSON. But this is it, this is the area, is it not?

Mr. GOOD. Oh, yes, one of the areas. Every conceivable area has been covered.

Senator SIMPSON. Thank you very much.

Thank you, Mr. Chairman.

Senator DECONCINI. Would the Senator yield just for a followup question? You said that you might lose your credibility with your whole operation had you told Silvestri to forget bringing in Senator Pressler. Don't you sometimes in undercover efforts have to do that?

Mr. GOOD. Oh, definitely.

[51] Senator DeConcini. So why couldn't you make up a story, or if you really had a sound, thought-out plan, wouldn't you have anticipated that perhaps you would have been bringing in somebody you did not want to, and have some excuse or scenario to lay on Silvestri, saying, "Wait a minute, we are saving him for later; we have got some other ideas for Pressler." You could have said that to Silvestri, could you not, "So we do not want to do that. We are interested in A and B today, and we will take care of Pressler later." Why couldn't you have used something like that?

Mr. Good. It is possible that we could have come up with a scenario like that, but the thought did not come to us at the time. We had represented to him that we had money available; he came to us and said, "I have got somebody better for you."

Senator DeConcini. Well, I only know from my experience with undercover activities, you do come across people you do not want at that time—you want them later—and you have got a good reason, and you can usually finesse it with you informants, even if they are the worst of guys, including——

Mr. Good. We were not dealing with an informant here.

Senator DeConcini. No. That is right.

Mr. Good. If we were dealing with an informant, we would have controlled the situation.

Senator DeConcini. Yes. I stand corrected. Dealing with [52] an informant or not an informant, with someone in Silvestri's position, it seems to me that with—and I hate to say this, because it may sound some special privileges—but with a U.S. Senator, or with any citizen that was not part of your game plan, it seems to me not unreasonable to have an alternative.

Mr. Good. Possibly, we should have considered it.

Senator DeConcini. Thank you, Mr. Chairman.

Senator Leahy. I just want to make sure I fully understand that answer, Mr. Chairman.

In other words, you had no contingency plan; is that what you are saying—this long into your whole program, you had no contingency plan?

Mr. Good. We had a meeting set up, and when he decided to bring somebody instead of the person he represented to us, it took us by surprise, and we did not have an alternative to tell him not to come.

Senator Leahy. So, even though you were obviously running the risk—and apparently, the proven risk—of them running the operation for you, as I mentioned earlier, the tail wagging the dog, you had no plan to crack that, no plan to stop that?

Mr. Good. I think the ultimate plan, Senator, was the fact that Senator Pressler came in, and he did not take a bribe. That was the ultimate safeguard here.

[53] Senator Leahy. Do you mean, you had that in your contingency plan?

Mr. Good. Of course. That is the ultimate safeguard.

Senator Leahy. I missed that part in reviewing the memoranda you had, setting this thing up, but I will go back and check again.

Mr. Good. What is always the ultimate is the videotape; that is the ultimate evidence.

Senator **Leahy**. I think you missed my point. The point is, you had no contingency plan to call off this once they told you who you were going to have in. Once they, in effect, took over the operation from you, as apparently they did in this case, and gave you this—as you said, you only had a few minutes' notice and so on—you had no contingency plan to take control of that yourself?

Mr. **Good**. They were not controlling the operation. They were selecting the people who they reported to us to be corrupt to come in.

Senator **Leahy**. Well, if that is not controlling it, maybe we have a semantics problem here.

Mr. **Wilson**. Senator, wouldn't that make us selective if we did just what you are suggesting—and we were not selective in this case; the middlemen were.

Senator **Leahy**. Well, I would hope that you were going to be doing some selectivity here. I mean, otherwise--

[54] Mr. **Wilson**. We are talking about this particular case.

Senator **Leahy**. Oh, I am, too, and that is why I think that you do some selectivity. I asked earlier if you have something similar to this going on now directed against the Congress, and I understand your answer to be "No" on bribes. Do you have similar operations underway, say, as a result of the press reports on sex scandals over in the House of Representatives? Do you have anything going on there?

Mr. **Wilson**. Are you asking me that?

Senator **Leahy**. Yes.

Mr. **Wilson**. I do not know.

Mr. **Revell**. Senator, obviously, we have ongoing investigations, of public corruption, and it would be improper——

Senator **Leahy**. I am not asking you to go into which ones you have, obviously, but my point being that there is talk about something where you could fish with a wide net, also. I think all of us like to think that there is some kind of indicia that would make us subjects of investigation other than simply holding public office.

Mr. **Revell**. There was——

Senator **Leahy**. There are certain restraints in holding public office these days, anyway—your loss of privacy, the effect on your family, the harassment of your family and yourself, and everything else—and while I am not suggesting that we are immune from corruption in public office—we are not, nor are law enforcement officers or anybody else—but I think [55] that each one of us would feel more comfortable—and by "each one of us", I mean whether it is in the Congress or any State office, county office, local office, or anything else—that there is some indicia other than simply being in public office that might make us the object of an investigation.

Mr. **Revell**. There were several other indicia here; there always are. And I have to presently approve these before they go to the Director, if it is at the level of a Congressman or a Senator, and I can guarantee you that there are always additional indicia. In this case, there were several. One, Silvestri was not a person who simply walked in off the street. He had been dealing with this operation for an extended time. He had already produced a very senior Member of the other House, who had done exactly what Silvestri had represented to us. He dealt extensively in the realm of the political milieu in that particular area. He represented to us that an individual, Senator Pressler, would do exactly what the others had been required to do.

We knew after checking that indeed, there was a Senator Pressler from South Dakota. We knew what he looked like. If there had been a person other than he who had appeared, this particular scenario would not have gone forward. But the key element, the issue, is we would have had no suspicion of Senator Pressler until such time as he personally would have represented, if indeed he ever had any intention, which he did not, that he [56] intended to commit a criminal act. And that was the safeguard, the bottom line safeguard, in fact, of all the other circumstances.

Senator MATHIAS. The Chair is advised that we have a rollcall vote on the Ford amendment with respect to excise taxes on cigarettes.

We will take a 10-minute recess.

[Short recess.]

Senator MATHIAS. The committee will come to order.

Mr. Neal, do you have further questions?

Mr. NEAL. Yes, sir. I do want to straighten up two things, where either you are right or I am right—we both may be wrong.

One of the things that concerns me about Abscam—and there are lot of things that please me and do not concern me—but along toward the end of Abscam, there were an awful lot of people approved for bribes that did not take bribes, unlike the first couple. And one gets the sensation—I will use Senator Simpson's word—I use a different word—but sort of "giddy", just bringing them in—take Silvestri, now. You say that he had a good track record. I am telling you, Mr. Good, that according to your records, you authorized bribes on the word of Silvestri in six cases—five or six cases—leaving aside Thompson. In four of those five cases, it was untrue or did not go through, although you authorized it, and in the [57] fifth case, the decision has been made that there is something so ambiguous that you are not going to prosecute. Now, that is the track record of Silvestri. As to former Congressman Thompson, according to your documents—and I can show you the documents—you relied on the representations not of Silvestri but of Criden. And I am prepared to show you that document, if you wish.

Mr. GOOD. I agree with your statement.

Mr. NEAL. All right. As to Silvestri, according to your documents, his track record was so bad that by the time you got to Senator Pressler, in my judgment, you should have paid no attention to Silvestri, because as I said, the one man, one of of the six, that actually, he brought in, and that man may have gotten money, the situation was so ambiguous that the Federal Government has decided not to prosecute that man. Now, that is the track record of Mr. Silvestri, according to your own records.

Mr. GOOD. And I concur with that. I would like to add to that a little bit, though. His track record is not one that you could say is good, but when you take all things into consideration—his background, his associates, the fact that he was involved with people who we had to accept the fact that he did have political associations and connections, he made this representation to us that he was bringing these people in——

Mr. Neal. I do not have any doubt about that.

[58] Mr. Good. The dilemma is this: Do we say no? The courts have ruled that it was not the responsibility of the agents to make that determination, so the only way that that can be clarified for the benefit of the agents that are working on the street and dealing with these cases is to pass a law telling us what to do.

Mr. Neal. Mr. Good, in conversations, you and I both, we may be often in error, but we are never in doubt. And we have had some of these conversations before, and you understand that this committee—the courts deal with whether your operation violated somebody's constitutional rights—this committee, as I understand it, deals with how an undercover operation is conducted, and whether any improvement should attempt to be made or not, that is, as a policy matter. And you understand in the very courts you are referring to, the courts themselves, in response to defense counsel's objections to Abscam would say to defense counsel and Judge Pratt that you all referred to repeatedly, Judge Pratt said on the record, "I am not dealing with whether this thing should have been conducted this way or some other way, or whether these things should be conducted at all; that is a matter you must address to Congress." Now, you recognize that.

Mr. Good. I fully agree.

Mr. Neal. OK. So that is why we are here.

Mr. Good. I agree 100 percent.

[59] Mr. Neal. Now, the other thing I wanted to get straightened out is, everybody has said, "Well, we have got to go ahead with these middlemen." We cannot say, "Do not bring them in," because that would blow our cover. That just seems to me to be a cover you could say to somebody like Silvestri, "Look, I want to know why you are saying this. The FBI might get us if you bring a man in who is not corrupt." In other words, it seems to me that you could probe these middlemen in a way that would advance your cover and still get more information about the reliability of that information. Now, I merely make that statement.

Mr. Good. And we did do that. We were very explicit to these people that we wanted them to bring us people that they had done business with before, that they knew were corrupt. We did not want some honest Congressman coming in who was going to blow our cover. This point was made to them.

Mr. Neal. All right, but it seems to me it would advance your cover—and you know how you do when you are using an informant for the basis of getting a search warrant. If that informant makes a bald conclusory statement that there is contraband somewhere in the house, you ask him, "How do you know about this? Have you been in the house? When were you in the house? What is the basis of that conclusory statement? When you say Congressman A or Senator B will take a bribe, what is your basis for that? Why do you say that? [60] Do you know of a situation before where he has done that?" That is the kind of thing it seems to me that you could probe with these middlemen, test their reliability, their basis for the information, and still advance—not blow—your cover.

Mr. Good. And when the opportunity presented itself, we did do that. But there is one difference in the point where we get a search warrant. Here, we are intruding on somebody's home. This was a situation where they were coming to us. We were not creating the intrusion. They had the opportunity to tell Mr. Silvestri——

Mr. NEAL. Well, wait a minute. They were coming to you, Mr. Good, getting before a hidden camera. All that means to me, it may be, as I say—I am not passing any—I think undercover operations are absolutely necessary. I will just simply go on record. And I think that every Senator on this committee has expressed himself for the necessity of undercover operations. I think a person sort of recognizes, though, that when you bring anybody—and certainly, a delicate situation like a legislator—when you bring them before a camera, you are involving a substantial intrusion on privacy rights. Now, it may be necessary.

OK. Now, the next thing I want to ask you about is, if you do not have time to do this, and if you are getting a lot of people in, Mr. Good, if in November and December and January—or, November and December, let us say—you are [61] authorizing bribes at a lot of occasions where they do not materialize, and if you are taking 30 and 40 minutes to make a judgment, isn't that the time to say, "This has gone long enough; let us close down the operation"?

Mr. GOOD. And I think that that was done.

Mr. NEAL. Well, it was done not on November 6, or October; it was done in February.

Mr. GOOD. If you recall the review of some of our files, you can see that consideration to shutting down the operation was under advisement back in October, even.

Mr. NEAL. It was, but wouldn't you say that when you have a thing like the Pressler, where you made a judgment like that in 30 minutes, and you do not have time to probe for anything, isn't that the time, then, to say, "Well, now is the time to stop it. We have gone as far as we go. Let us don't"—in the words of Senator Simpson—maybe we are getting giddy now. We are making a lot of approvals, like all these Congressmen whose names I have here, we are authorizing a lot of bribes, and nothing has happened. Isn't that a relevant consideration in saying, "It has gone far enough. Let's turn it down"?

Mr. GOOD. I am sure it was considered, and the decision was made to go forward. We did not want to be put in a position where we were being selective. If you recall, in connection with Senator Pressler, he was the first member of a [62] different party that was brought to us. We could have been criticized very badly for refusing to allow him to come in, and then, if his name was brought to our attention, and we did not let him come in, it would never have been resolved that the man was a completely innocent man. He would have hung out there, dangling, without anybody ever knowing.

Mr. NEAL. Well, wait a minute now, that is no good answer. You have got a lot of names in here who are dangling out there.

Mr. GOOD. But, no; they never came in. It was their decision that the middleman was a sleazy individual, and they did not pay any attention to him. They made the right decision.

Mr. NEAL. The other thing you said is that, "We cannot change plans." Well, now, Mr. Good, you changed plans several times. One question asked by a Senator was, "Why not wait? Why not look at it a little longer?" And you said, "Well, we had no scenario for that," or something. The truth of the matter is, during Abscam, you delayed; you changed plans without blowing your cover. For example, on July 11, 1979, you had a middleman schedule a meeting with Congressman Jenrette, but for reasons, quite good reasons, you quickly changed. You canceled that meeting and later on, did it again.

So there is no reason you cannot say—you had to go ahead in 30 minutes. That is my point.

[63] Mr. REVELL. Senator, you are talking about—I mean, Mr. Neal, you are talking about——

Mr. NEAL. I thank you—oh, let me withdraw that and say that I have mixed emotions. [Laughter.]

Senator MATHIAS. There are some that would not have any mixed emotions. [Laughter.]

Mr. REVELL. From November 30 until the conclusion of the operation—November 30, 1979 until February 2, 1980—there were 13 instances in which requests were made for authority to proceed with bribery authorizations. Of those, nine were actually completed, and bribes were paid. As to the comment about getting giddy and bringing a lot of names, the vast majority of those representations, 13, 9 of which actually concluded with the bribe payments, including two Members of Congress, I think it was somewhat inaccurate in making that particular point.

Mr. NEAL. Well, Mr. Revell, I will check your figures. I have got an awful lot of names here on which bribe offers were authorized, but nothing materialized, and my recollection of that is that those come mainly in the end of your operation.

Mr. REVELL. I will be glad to go over them. Those are the correct figures.

[64] Mr. NEAL. OK.

Mr. Wilson, go back and say, now, you have got this thing, and I think we have established how the information is fed in to headquarters, what you do with it, how it goes up. Now, once the operation is approved; what do you do then?

Mr. WILSON. Well, then I would send a communication back out to the field, stating that. If there was time involved, I would make a telephone call, but certainly, follow that by a communication—or at least, try to. There were some occasions where I did not, and it was done by telephone only.

Senator MCCLURE. Mr. Neal, would you yield for just one moment?

Mr. NEAL. Yes.

Senator MCCLURE. While we are still fresh in our mind on numbers, because you are talking about authorizations, the authorization may have blanketed more than one person. We have certainly more than 13 names in our files of Federal, State, and local officials or public officials.

Mr. REVELL. Their names may have been mentioned, Senator, but we did not authorize their being approached for a bribe payment. I am talking about the period from November 30 until February 2. They were talking about getting "giddy" and a number of things.

Senator MCCLURE. We have more than 13 names in our files.

Mr. **Revell**. Oh, well, during the entire operation, there [65] were 32 authorizations for bribery payments upon meeting conditions set forth. Of those, 17 were actually paid. Now, many, many more names surfaced, but as far as the approval process and the authority to go forward to determine if a bribe should be paid, there were 34.

Senator **McClure**. Thank you.

Mr. **Neal**. Mr. Chairman, that about completes my questions for Mr. Wilson. He has explained that he collects information, he puts it in form, he passes it up, he gets the information back, and he passed it out in the field.

I have no further questions of Mr. Wilson.

Senator **Mathias**. Now, is it your recommendation that we then proceed to ask what questions members have of Mr. Wilson, and then you will examine Mr. Good?

Mr. **Neal**. That would be my recommendation.

Senator **Mathias**. Is there any objection?

[No response.]

Senator **Mathias**. I have, really, just one question, Mr. Wilson, and it relates to this policy question as applied in the factual situation in which you were operating. Director Webster, when he testified—I believe it was on the 4th of March 1980—said:

> If we are running an undercover operation, and a crook, totally unreliable, comes in and says, "A police captain wants to sell protection; he regularly sells protection to bars here," I think we ought to say, "Bring him in."

[66] That is the Director. Now, what happened in the Pressler case is totally consistent with that theory; isn't it?

Mr. **Wilson**. That is correct.

Senator **Mathias**. What you did and what Mr. Good did is completely consistent with the Director's views on how this ought to operate. But testifying on the same day, Mr. Heymann said:

> There are only two ways in which a public official will become the subject of an undercover investigation. One, if he is the object of reliable, specific criminal allegations for which an undercover operation is an appropriate method or investigation, or two, if by process of self-selection, he voluntarily enters an operation.

Now, would you say that what happened in the Pressler case was equally consistent with the Assistant Attorney General's views on how this ought to operate?

Mr. **Wilson**. As you know, the Pressler situation, again, the representations were made. I certainly think that is true, yes. It is not a self-selecting process. The middlemen brought these people to us.

Senator **Mathias**. Yes; but Mr. Heymann says, "the object of reliable, specific criminal allegations."

Mr. **Wilson**. We were basing our reliability on these middlemen; yes.

Senator **Mathias**. Well, I guess I would have some trouble identifying Silvestri as a reliable middleman, in light [67] of his——

Mr. **Revell**. Senator, I think we are talking about the second criterion, and again, there is a degree of both. The self-selecting—the public figure is not approached by the undercover operative. He comes to the operation. That is self-selecting to a degree. There always is a presumption at this point that there could be a charade going on. That is the reason the final protection is the face-to-face representation.

Senator MATHIAS. But I would not say in the Pressler case, it was self-selection, because as I recall, he thought he was going to meet a Political Action Committee representative——

Mr. REVELL. I agree, I agree.

Senator MATHIAS [continuing]. So that he was totally misled. And in the *Williams* case, he was going on behalf of a constituent to talk about the financing of a business operation.

Mr. REVELL. But in the context of what Professor Heymann said, that is, that the individuals come to the meeting—now, there is always a presumption that there could be, in fact, subterfuge, and of course, there was, in some instances. But I think what Assistant Attorney General Heymann was testifying about is that we are not going to go out on the representation of an unknown individual and approach somebody and offer him a bribe, that there is a selection **[**68**]** process in which the individual would come to us under certain representations. But in any case, we are going to have these final safeguards. And I think to forget that these safeguards were a requirement would be to substantially undermine what we call the self-selecting process. That selection goes on until the bribe is paid.

Senator MATHIAS. Well, I would have to be frank and say that that is where I have some trouble with this self-selection theory. Self-selection, it seems to me, might operate if you put out a rumor that there was a pot of cash around somewhere and that you ought to go to a meeting and find out how you could get a cut of it. Now, if somebody took up that kind of a hint and moved in and said, "How do we divvy up the pot," that is self-selection. That is somebody obviously trying to deal themselves into the act. But when there is a meeting suggested for a perfectly lawful, legitimate purpose, at that point, I do not see that self-selection has begun.

Mr. REVELL. If we were not concerned about that, if we felt we had a case before the meeting even took place, then of course, we would not have these final requirements, these final guarantees. So that is the reason I say that the self-selection process continues up to the point at which there is actually an exchange of funds.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. That you, Mr. Chairman.

[69**]** Well, as a matter of reality, and look at just precisely how the operation worked, the safeguards—the only safeguards, in fact—are those that occur at the point where the bribe might be offered, where the television cameras are running. That is really the only safeguard that you have, because you do not know what representation has been made to the indivudual. You run your indexes, and they are irrelevant—I think that has beem demonstrated—because not a single incident in which a corrupt middleman made a reprsentation that an individual would accept a bribe, not in one single case did this process that you talk about, running the indexes, checking, whatever, did it prevent any person from being brought to the room, to the place where the TV cameras were. The ones that did not come did not come because the middleman could not deliver, not because you told him not to bring them.

Mr. REVELL. We told them not to bring them unless they met the conditions that we had set.

Senator HUDDLESTON. But you do not know——

Mr. REVELL. That is correct.

Senator HUDDLESTON. In other words, if you had an agent——

Mr. REVELL. But we ascertain very quickly.

Senator HUDDLESTON. You tried to ascertain.

Mr. REVELL. We always did. We always ascertained. There was no money exchanged in Abscam——

[70] Senator HUDDLESTON. Oh, I understand that, but I am saying that the only safeguard is that final safeguard that occurs—the only time you can ascertain is when you have got the individual before the cameras, and you are talking to him, as you did in the Pressler case—you ascertained very quickly there that the procedures had not been followed.

Mr. REVELL. Well, there were a series of meetings with some of the public figures involved, so you are correct in the Pressler case and some others, but it is not a totally accurate statement as to all the situations in the entire case. There were several meetings with other individuals.

Senator HUDDLESTON. And they were not brought before the cameras, on your volition?

Mr. REVELL. There were individuals who were never brought into a face-to-face meeting because of the dialog that went on between the influence peddlers and the agents. Others never showed up, in spite of the representations of the middlemen.

Senator HUDDLESTON. Right, but that was the failure of the middleman to deliver.

Mr. REVELL. Some of the public figures came to several meetings where there were ongoing negotiations as to what type of activities would be undertaken.

Senator HUDDLESTON. Before the bribe offer was made?

Mr. REVELL. Before a final offer was made, or there were——

[71] Senator HUDDLESTON. But in the case of members of Congress, not a single one was thwarted from coming to that meeting on the basis of information that you developed in your so-called approval process and said, "No, do not bring him in"; is that correct?

Mr. GOOD. Could I respond to that, Senator?

Senator HUDDLESTON. Yes.

Mr. GOOD. There were a couple of occasions where the middlemen had advised us that the Congressmen did not want to meet under the circumstances that we had set up, that they wanted a middleman to handle the transaction, or wanted different circumstances that did not fit within our criteria, and then that particular incident was dropped.

Senator HUDDLESTON. But that is a representation of a corrupt middleman, and as a matter of fact, it might have been just that he could not deliver, period.

Mr. GOOD. It could be, yes.

Senator HUDDLESTON. So what I am getting to—we dwelt a little while ago on the normal kind of safeguards or procedure that you would go through if, for instance, one of your agents developed a potential situation where you would want to either become involved in some kind of surreptitious operation. You would do certain things, becasue you are dealing with agents, you know the rules, and you attempt to follow those rules. But it seems to me that when you are dealing [72] with corrupt middlemen, there is an area in there where you cannot possibly know what the representations have been, so you are in fact surrendering to some degree the level or the standard of operation that you would normally have.

Mr. WILSON. Well, keeping in mind, Senator, that these people, again, are subjects of the case, also, they are not people that we control——

Senator HUDDLESTON. That was my next point; you cannot control.

Mr. WILSON. That is correct.

Senator HUDDLESTON. You cannot, for instance, have—the middleman, in the first place, does not know he is dealing with the FBI. He thinks he is dealing with another corrupt person. So it would not be in the world of reality for that other corrupt person to go and say, "Look, you are violating the law," or, "You are violating the standards that our investigative agencies have set for dealing with this." That obviously would not work; you would not have an operation. So there again, to that extent, you do have to surrender a little of your authority and a little of your ability to make sure that every process is followed the way that the law and your own regulations indicate that they should be, and you provide that safeguard, that last, final safeguard.

Mr. REVELL. Only as to the meeting, not to the final action.

Senator HUDDLESTON. I understand. That is right. You [73] control that. Once you get into that situation, you are in control, but up until——

Mr. REVELL. This is a situation beyond, of course, the political corruption situation. This goes to undercover operations in terrorism and——

Senator HUDDLESTON. I understand, and we are interested in all the undercover operations, not just Abscam. That happens to be the subject we are dealing with now. But you do impose that final safeguard, and in fact, that represents, really, the only real safeguard. And it just raises the question, how far have you already imposed on a person's rights, liberties and privacy, when you get him into that room. He is before the cameras. The film made, for instance, of Pressler is in the public domain; it is there. Somewhere in the future, the record shows that the FBI authorized—well, in this case, they did not authorize—a bribe to be offered, but somebody might construe it as that.

But I think, as counsel has pointed out, this comes in that area again of the possible costs, and the risks, of this kind of operation.

Senator MATHIAS. Senator McClure?

Senator MCCLURE. Mr. Chairman, thank you.

I think it is plain that you have more than one dilemma with which to deal. One is, when it is alleged that somebody is criminally inclined, do you not investigate. There are a [74] good many cases you do not investigate, even though you have reliable information that a crime has been committed; a good many—you get information from all kinds of sources, and somebody will tell you something that you do not have the resources to follow up on, or the information is not credible enough for you to follow up on; is that not correct?

Mr. REVELL. We do not always have to have totally credible information to start an investigation. We certainly do to continue an investigation. For instance, we may get an anonymous allegation, and we will conduct sufficient investigation to determine if we have information to predicate a case.

Senator McCLURE. But I think it would also be fair to say, wouldn't it, that you get a lot more anonymous tips than you follow up?

Mr. REVELL. If the tip, even if true, would not result in a case that would go to Federal prosecution, then obviously, we are not goint to expend our resources.

Senator McCLURE. I understand that, but that is not what I am asking. There is an awful lot of information that flows around in a whole variety of different channels and some of your agents hear from one place or another, that somebody is involved in some crime, and you do not follow up by an investigation of every one of those bits of information.

Mr. REVELL. We evaluate every bit of information.

Senator McCLURE. Every bit of information?

[75] Mr. REVELL. Every bit of information that comes to us, we evaluate to determine——

Senator McCLURE. Somebody does.

Mr. REVELL. That is correct.

Senator McCLURE. The agent who hears it decides to follow up on that case and not on that other one.

Mr. REVELL. Of course, if the agent makes the determination not to document the information and submit it to his supervisor, then he is the only one who evaluates it.

Senator McCLURE. That is right.

Mr. REVELL. If he documents it, which he was required to do if there is any possibility of substance, then it has to be evaluated by a supervisory official who determines whether a case should be opened, what type of case it would be and what action should be taken, or whether it should be referred to a local agency.

Senator McCLURE. Well, I used to work with the FBI when I was in law enforcement, and let me say, if you investigate every bit of information that comes to you, that is a great change from law enforcement practices of several years ago.

Mr. REVELL. Obviously, we do not, Senator. We cannot.

Senator McCLURE. Well, that is the point I was trying to make is that obviously, a lot of information comes to you that you do not follow up because of either lack of personnel, lack of sufficient severity of the possible crime, or because you [76] do not believe the information is sufficiently credible to follow up; is that correct?

Mr. REVELL. Yes, sir.

Senator McCLURE. You also have the dilemma that if there are political figures involved, and if you elect not to investigate, you might be subject to the criticism that you are shielding political figures; is that not a matter of concern to you?

Mr. REVELL. Of course.

Senator McCLURE. You mentioned a moment ago that in some instances, the middleman indicated that the public figure was unwilling to come to the meeting under the circumstances that you had prescribed. Did it ever cross your mind that maybe that corrupt middleman just wanted to get his hands on the bribe money, and there was never a person out there in the first place?

Mr. REVELL. We knew there was a person, but we also knew that we could be conned or there could be an attempt to con us. That is always a possibility. That is the reason for the absolute, final safeguard we install.

Mr. WILSON. And it did in fact happen on one occasion, an imposter situation.

Senator MCCLURE. So those safeguards are not just to safeguard the public person that is involved, but are also to safeguard the money.

[77] Mr. REVELL. And also the agency. We obviously do not want to be duped ourselves.

Senator MCCLURE. Yes; I think that is fairly obvious that you do not like to, but it is also fairly obvious you are dealing with some people who are quite capable of doing that. They dupe others, and occasionally, they dupe you.

Mr. REVELL. On rare occasions, that has happened.

Senator MCCLURE. I am concerned, though, with one fact that has emerged here, and I would like to have you comment. Maybe there is no way to provide real safeguards prior to the face-to-face meeting. But you act as though you feel no responsibility for the actions of the middleman—the corrupt middleman—that your responsibility starts at the time you are in face-to-face confrontation with the person that is involved, one of your agents. What the middleman does is his business. And while you say you have safeguards, prior to the time of the meeting, those safeguards are purely ritualistic. They have nothing to do with whether or not the meeting takes place.

Mr. GOOD. Could I respond to that, Senator?

Senator MCCLURE. Yes, sir.

Mr. GOOD. The middleman has an incentive, too, in this. No. 1, he is not going to bring somebody into a bribe situation that he feels is a totally honest person, for fear that this man might turn him in to the law enforcement authorities. Again, he is looking for an end out of this [78] himself. What incentive would he have to bring in an honest man who would not take a bribe, because he would not be getting a piece of the action?

Senator MCCLURE. No; but the more he can bring in, the more opportunity he has to find one that will take a bribe, whether he knows they are honest or dishonest.

Mr. REVELL. More realistically, he also runs the risk of being detected in his corrupt activities if he in fact brings in someone who, in turn, calls the local district attorney or the FBI and says, "I am a public official, and somebody is trying to get me to take a bribe."

Senator MCCLURE. Well, I understand that, but you have still got the same problem you have in any other case. You have to make a case against him. And a lot of these guys have been living on that shadowy edge of the law for a long time, and they are not too much intimidated by you. You know, it used to be said that, "Crime does not pay", and the FBI used that motto, but we know better now.

Mr. REVELL. There are a whole lot of folks in Federal prison now for whom it did not pay.

Senator MCCLURE. Yes; but there are a whale of a lot more who are not.

Mr. REVELL. That is true, but we do the best we can.

Senator MCCLURE. I know that, and I want you to do the best you can. But the fact of the matter is, the middleman is [79] not so scared of being exposed that he is not going to bring somebody in for fear the guy might squeal, because the guy has got to be able to prove it when he does. All you have to do is have a one-to-one conversation, and the other guy cannot prove it.

Mr. WILSON. But he is still in it for money, Senator, and that is——

Senator MCCLURE. Sure, he is after money, and the more people he brings in, the more opportunity he has to get it.

Mr. WILSON. Certainly, there is always that possibility.

Senator MCCLURE. If I were going to go after those lunkers that my friend from Wyoming was talking about, I would fish where the fish are, and if I could find a lot of fish in that pond, I have a better chance of catching some; even if some of those fish are full, or some of them will not bite, if I do not put my bait out there where there are a lot of them, I am not going to catch any. I think the middleman has every reason to try to get a lot of people in. The more he gets in, the better his opportunities are, and I do not see—maybe there is not any way—but I do not see that the prescreening means anything. You have got a lot of paperwork, and gosh, bureaucrats love paperwork. You have got a lot of signoffs. You have got that stamp and a lot of initials. But they do not mean anything up until the time of that first meeting, because you do not feel responsibility for [80] the activities of the middleman. You take his word for it. He is the one who makes the representations. It is upon his representations that you react.

Mr. REVELL. We do not take his word for it. His word is subject to all the tests and scrutiny.

Senator MCCLURE. Up to the time of the first meeting.

Mr. REVELL. We take his word that he will produce the individual he said he will produce. Obviously, if he does not, then there is no meeting, and there is no bribery scenario.

Senator MCCLURE. But you have indicated that in every instance that he named a name, you authorized a bribe offer if it met the criteria you had set out.

Mr. REVELL. Only if he represented to us that the individual would be there, that he knew why he would be there, and so forth——

Senator MCCLURE. That is right.

Mr. REVELL [continuing]. Which we had no way of testing totally until that point at which——

Senator MCCLURE. You had no way of testing at all, except based upon his representations.

Mr. REVELL. Unless there were a series of meetings. But when they walk into that room together, then his credibility and what he has said are subject to total [81] scrutiny and verification.

Senator MCCLURE. Of course, and I do not question it from that point forward. My question lies up to that point.

Mr. REVELL. Well, from the time I testified Tuesday through Mr. Mullen's testimony yesterday and today, we have agreed that that is the ultimate test. There are instances in this case and others in which individuals initially appear at meetings while we are relying on information that we cannot 100 percent determine is accurate—and in fact, in some instances, we have found was not accurate. What we have testified to, what the guidlines call for, and what the court interpretations call for is that we ascertain all of the factors we have described before we extend a bribe offer.

There is no question we understand that and that you understand that. There are many situations not only in public corruption cases but also in other types of cases, in which that is all we have—period. That is all we have up to that point.

Senator MATHIAS. The Chair is advised that there is a rollcall vote now in progress on an appeal to the Chair on the germaneness of the Thurmond amendment, which would take the tax from tobacco and apply it to whisky.

Senator HUDDLESTON. The Senator from Kentucky would advise that the amendment is nongermane. [Laughter.]

[82] Senator MATHIAS. In view of the fact that it is now 10 minutes past 12, I doubt the practicality of trying to come back for a few minutes, so we will recess until 1:30 p.m.

[Whereupon, at 12:10 p.m., the committee was recessed, to reconvene at 1:30 p.m. this same day.]

[83] AFTERNOON SESSION

[Whereupon, at 1:43 p.m., the hearing was resumed.]

Senator MATHIAS. The committee will come to order.

When we adjourned for the vote, I believe that Senator McClure had just completed his round of questions. We will now turn to Senator Simpson.

Senator SIMPSON. Thank you, Mr. Chairman. I just had a kind of quick review. I have been in and out these last 3 days of hearings and have been briefed by my staff member and by this very capable team of counsel here, Mr. Neal and Mr. Wheeler. I just would like to ask several questions. One is principally for my own pure edification. Would you review again for me why there is no ability to pull off on any kind of a reference? Would you review that? That was a statement made, a kind of a threading-through process. What is that again?

I know that you have said it is tough to stop and you blow the cover and so, but review that just briefly, why no pulloff on any reference.

Mr. GOOD. Would you like me to respond to that?

Senator SIMPSON. Whichever one of you cares to respond.

Mr. GOOD. I think that we were referring to this particular incident when we said there was no mechanism to pull off of this. In other situations we may have, and I cannot think of one offhand, we could have. But we were referring just to that one specific incident, where we felt that it was not advisable [84] to pull off. In other situations, we may have been able to control the situation to a better degree and give ourselves more time. That was why we had the built-in situation where Weinberg would receive the initial information from the corrupt middleman. That gave us a built-in time factor because he would get the information. He would advise the middleman that he would have to relay this information to Tony Amoroso in his undercover capacity, and he would be the one that would make the decision whether or not he would go forward. But he would also have to confer with the sheik to make sure.

This was a delay mechanism that we had established to give us more time so that a middleman could not come running in and say, hey, I got a guy right here, you got to do business. So, we did have a built-in control mechanism as far as the time factor in most cases.

Senator SIMPSON. But, obviously, pulling off is a difficult thing to do when you are full tilt.

Mr. GOOD. In that particular situation, yes, sir.

Senator SIMPSON. In most situations, would it not be?

Mr. GOOD. I think in the other situations it was not the same set of circumstances. We did have time to get the proper permission, proper authorization. We did have time to do our background and identify the people. In some cases we found that they had previous cases pending.

Senator SIMPSON. Let me ask you about the book that you [85] use to determine, as you review, I guess, biographies or materials about various Congressmen. Is the book and the material in the book all from public sources?

Mr. WILSON. I can answer that. Yes, sir, it is. That is a public document.

Senator SIMPSON. All of it?

Mr. WILSON. All of it that we were using, yes.

Senator SIMPSON. Then I guess it comes from my particular interest, since I have been thrown into the tiger's den with regard to immigration matters, as chairman of that subcommittee. I have watched, when I came to this place 3½ years ago, and was rather startled by the number of private bills that were before the U.S. Congress. I began to inquire about where they were coming from and why and why they were dealt with in such, as I came to feel, a very cursory fashion.

So, it was of particular interest to me to see when there was suddenly the shift from the art world and securities and where we came to the genesis of the asylum scenario, which in its own case had to do with, quote, "private bills," unquote. Apparently, from my review of all of the evidence and what I am given to review, this asylum scenario came or sprang from the mind of Agent Anthony Amoroso, who came up with it on the spur of the moment on a cruise out of Miami with some of the original targets of Abscam.

[86] I would be very interested to know whether Amoroso or any other agent or person involved in Abscam had participated in any previous FBI investigation involving private immigration bills. That seems very unlikely to me that that was something that had its beginnings in the mind of Amoroso. When did it spring full-blown into his mind? I would like to know when that creative thinking started.

Mr. GOOD. I think I can respond to that, Senator. I will try to give a little clearer narration of the facts as they occurred.

Amoroso had that meeting scheduled on the boat with Criden, Errichetti, another individual that they brought, and Mel Weinberg. The purpose of that meeting was to discuss casino financing. There was no preplanned intention to discuss immigration or anything else. They had a meeting in the lower deck of the boat, where they discussed the casino financing. Then it was suggested that they take this cruise up the Intracoastal. It was during this casual meeting that they were having. It was not to discuss anything in particular. Amoroso was not even aware of the fact that this was Somoza's boat, but the agent who was captaining the boat pointed at the boat and said: that's Somoza's boat. That kind of struck a note with Amoroso. He remembered seeing the article in the Miami paper the day before. That is what provoked him to strike up this conversation.

[87] Now, Amoroso does not contend for 1 minute that he had never had or heard or never been discussed anything concerning possible immigration of sheiks. He does not recall specific conversations, but he said it might have been mentioned. We were dealing at that time through another middleman, Al Carpentier, who had been making arrangements to bring to us an immigration officer who had advised us that he could get green cards, not for the sheik but for another individual that we had utilized up in New York who was a real live person who was attempting to get a green card illegally.

So, all of these factors put together was what brought about Amoroso bringing out this idea at the time. It was not preplanned by anybody. But all of these things went into his thought process at the time. And that is how it really started. Once he threw this out, he immediately notified us. We told our superiors that we had thrown out this idea. We did not mention anybody specific. We did not even mention Congressmen at the time.

At a later date, at the conclusion of the covert stages, in a statement given by one of the defendants, they say that on their way back to Philadelphia on the plane they are the ones that decided they would pursue it.

Senator SIMPSON. Yes, I can see the discussion. That is easy for me to see, a discussion about green cards and forgeries and fakes, and so on. That is common enough in the [88] United States, assuredly. But that is not what I am speaking of when I discuss private bills, private legislation, which was in vogue in this place for many years. What I would like to inquire and, I guess, come directly to it is this. In the Williams investigation did you come up with anything with regard to the abuse of private bills?

Mr. GOOD. No, we did not.

Senator SIMPSON. Nothing?

Mr. GOOD. Not to my knowledge. And to my knowledge Agent Amoroso had not worked on any cases involving immigration bills. But I cannot say that with all certainty.

Senator SIMPSON. In any other investigation other than Williams, was there anything that came to your attention with regard to congressional abuse of private bills in any course of investigatory line?

Mr. GOOD. Not that I can think of at the moment, but I cannot say with absolute certainty.

Senator SIMPSON. Do any of you have anything to add to that question, Mr. Revell, Mr. Wilson?

Mr. REVELL. I cannot recall any mention of any particular abuse during this time. I think Mr. Wilson, though, worked on a case like that at one time, but not in connection with this case.

Senator SIMPSON. Have you worked on such materials before?

[89] Mr. WILSON. I did when I was in Newark, yes.

Senator SIMPSON. Did it involve a Congressman?

Mr. WILSON. Indirectly, it did, yes.

Senator SIMPSON. Did it involve payment for introduction and sponsoring of a private bill?

Mr. WILSON. As I recall, it did. This was quite some time ago. The first that we at Headquarters heard of this scenario was in August of 1979, as it was memorialized on a communication sent by Mr. Good to us. He may have called us beforehand, but that is when it was written to us. That is the first we heard of it in this case.

Senator SIMPSON. Did the scenario usually include the sponsorship of a private bill and in some cases the payment for such a sponsorship through the Congressperson sponsoring or someone on the Congressperson's behalf? Is that the scenario? It is the basic one.

Mr. WILSON. What, in the previous case?

Senator SIMPSON. Yes.

Mr. WILSON. I do not recall, Senator. I would have to look at the case. Like I said, it was many years ago.

Senator SIMPSON. That is what I was just wanting to inquire of, Mr. Chairman. Suddenly it came to mind that private bills were something that could lead into a fertile area, and obviously it was quite a fertile area, was it not, about private bills. I guess there is not much to add to that. It [90] was. But I just wondered how it just suddenly sprang to mind. That seems a little strange to me that something that successful——

Mr. GOOD. When we originally threw out the idea on the boat, we did not ask for private bills or anything. This was as it developed down the line and, at least in part, as a result of the suggestion of the middlemen who were bringing in the Congressmen.

Senator SIMPSON. As I say, such a successful venture with such obscure beginnings. Well, enough. Yes?

Mr. NEAL. Mr. Good, this is one of the things that concerns me a great deal. Recognizing as it appears, at least my experience, too, that, once you start one of these undercover operations using a man like Weinberg, using middlemen, you cannot always tell how they are going to go and where they are going to go. They have a sort of a self-perpetuating machine in there. So, it seems it becomes sort of important how and why these things are started.

It seems clear from the records that the development of the asylum scenario by whoever started was an undercover operation aimed in a certain direction. Now, you say that Agent Amoroso articulated this asylum scenario on the boat that maybe the Senator is not familiar with, interestingly called *The Left Hand*. It was a boat, a yacht being used as a part of the Abdul Enterprises overall scenario. Right?

[91] Mr. GOOD. That is correct.

Mr. **Neal**. You say that this all started sort of casually when on July 24, 1979, on this boat somebody pointed out Somoza's yacht. Then Amoroso stated, and I am quoting from a document in the files of the Department of Justice reflecting that alleged starting of the scenario: "DeVito"—who was Amoroso—stated:

> That his employers were deeply concerned with the situations in Afghanistan, where government troops and rebels were fighting; in Ethiopia, where occurrences were similar; and in particular in Nicaragua, where Anastasio Somoza had had difficulty. The news media had reported that the U.S. Government advised the Nicaraguan Revolutionary Government it would consider returning Somoza to Nicaragua. DeVito stated—

And he is talking now to Errichetti, apparently—

> That his employers anticipated they would have to leave their country in the near future and were deeply concerned as to whether or not, due to unfavorable news media publicity, they would be accepted permanently in the United States and, once in the United States, would pressure from the new government force the U.S. Government to return them to their country.

According to the files in the Department of Justice, this is what Amoroso is stating to Errichetti. That is the asylum scenario. This was allegedly stated by Amoroso to Errichetti on this boat on July 24, 1979. Correct?

[92] Mr. **Good**. I think it is July 26——

Mr. **Neal**. I beg your pardon. July 26, 1979. I have correctly stated a summary of what Amoroso said on that boat, which is the asylum scenario?

Mr. **Good**. If that is what the doument says, I accept it, yes.

Mr. **Neal**. Let me represent to you that is what the document says.

This is a report of how Amoroso started that asylum scenario on that boat on July 26.

Mr. **Good**. I agree.

Mr. **Neal**. Now, the testimony has sort of been that this was sort of a casual thing spinning out what turns out to be a new undercover operation.

Mr. **Good**. I would not exactly agree with that. We were in the political corruption field, and names had been mentioned to us prior to that. It was a different scenario, I think would be a better classification.

Mr. **Neal**. The names of the Federal legislators mentioned to you were mentioned, as a matter of fact, on March 30.

Mr. **Good**. That is correct.

Mr. **Neal**. And nothing happened at that point with those legislators?

Mr. **Good**. That is correct.

Mr. **Neal**. All right. So, then on July 26, according to [93] you, the asylum scenario comes out, casually you say. The thing that bothers me is—and the dates are important. The things that bothers me is that 14 days prior to that, 14 days prior to this alleged casual development of a scenario, 14 days—I am sorry; 12 days prior to that there is a conversation between Mel Weinberg and a man named George Katz. Let met tell you what this conversation says. It will take me a moment or two, but I think it is worth while.

Mr. **Good**. I am familiar with the conversation.

Mr. NEAL. Well, I will read it, or I will characterize it. It you tell me I am wrong in characterizing it, I will read it.

Mr. GOOD. OK.

Mr. NEAL. I characterize this conversation, 12 days before this alleged casual development, as being precisely what Amoroso said on the boat trip 12 days later.

Mr. GOOD. I do not agree that it is precisely the same. It is similar, only I think there is one exception. Katz is the one who brings up Congressmen, not Mel Weinberg.

Mr. NEAL. Yes, but it was Weinberg 12 days before this alleged casual development, it was Weinberg 12 days before who says, in substance: You know, our employers may be kicked out of their country, and they may want to come to America and get protection here and not be forced out of here when they come here.

[94] Would you agree, taking this conversation and taking the substance of it, that I have accurately recited what Weinberg was saying? You are correct that, once he said that or in the course of his saying that, it was Katz who said: Well, then, they will need lots of friends in Congress.

Mr. GOOD. I agree with you, and I have no argument that that conversation took place. In discussing it with Amoroso, he says he does not recall specifically discussing this conversation with Weinberg; but he said, in an offhand way possibly, Weinberg may have mentioned it to him, and that might have been also part of this thought process when he threw out the asylum scenario.

Mr. NEAL. Are you saying then, according to what Mr. Amoroso says, that there is really no deliberate connection between the precise scenario that Weinberg put out on July 14 and Amoroso put out on July 26?

Mr. GOOD. There was no preplanned thought behind it, no.

Mr. NEAL. Isn't that a strange coincidence?

Mr. GOOD. I do not think so, no.

Mr. NEAL. You don't?

Mr. GOOD. We spoke about a lot of different things. We were together night and day for days at a time. There were a lot of things discussed that we kept in the back of our minds and never utilized.

Mr. NEAL. Let me juxtapose this with something else. You **[95]** are aware of the testimony here, that it has been that the Abdul Enterprises scenario, the Abscam operations, started out as a means of getting information in various places, as a means of compromising a hoodlum, and as a means of recovering stolen securities?

Mr. GOOD. That is correct.

Mr. NEAL. Indeed, you know that is correct because you were responsible for writing the request for approval of Abscam for those purposes.

Mr. GOOD. I was responsible for approving the request on my level.

Mr. NEAL. Having nothing to do with political corruption.

Mr. GOOD. That is correct.

Mr. NEAL. You are aware that the testimony here has been that this matter turned to political corruption only after Errichetti came in.

Mr. GOOD. That is correct.

Mr. NEAL. Now, again, that has been the testimony. But the truth of the matter is on September 13, months before Errichetti came in and like something similar to the development of the asylum scenario, months before Errichetti came in with his list of allegedly corrupt politicians, Weinberg is saying to Rosenberg: Well, you have to get us a politician involved.

Mr. GOOD. To Rosenberg?

[96] Mr. NEAL. I am sorry. To Weiss.

Mr. GOOD. Yes, OK.

Mr. NEAL. You and I have been over this.

Mr. GOOD. OK. The explanation——

Mr. NEAL. Before the explanation, what is the answer?

Mr. GOOD. Yes.

Mr. NEAL. Let me get another question out, and then you can give the answer to both of them. You were also aware that a couple of weeks later, on October 6, again—this is 1978 now, both 1978—again before Errichetti comes in, Weinberg is saying this time, I believe to Rosenberg, when they are talking financial matters in Atlantic City, Weinberg is saying: Well, we've got to get the juice down there; you've got to show us you got the juice in Atlantic City.

You recognize again, because we have gone over it, Weinberg is referring to politicians.

Mr. GOOD. Possibly.

Mr. NEAL. He talks about a politician in a later conversation using the same term, juice. If you have read the transcripts, you will recognize that.

Mr. REVELL. It could also refer to law enforcement officers, district attorneys, or judges. It means you have to have protection to operate.

Mr. NEAL. Let us submit it that way then. But it is Weinberg who is bringing this up. On September 13 he is [97] saying politicians, you got to have a politician in your pocket, once we get a politician in our pocket. Now, that is Weinberg bringing that up, very much like Weinberg precedes Amoroso in respect to the asylum scenario. And then again on October 6, before Errichetti comes in, it is Weinberg talking about the juice in Atlantic City.

Now, do you see the similarity in the sequence of those things?

Mr. GOOD. Yes, I do.

Mr. NEAL. All right. Now go ahead and explain the September 13 and the October 6 conversations.

Mr. GOOD. During the early stages of Abscam, Mel Weinberg was involved in not only the Abscam operation emanating out of New York but also what we term the Goldcon operation, which was run by the Miami office. In his conversations with Weiss and others down there, he was not under my immediate direction during the time he was there. He was being operated down there by agents who were working on the Miami squad and involved in Goldcon. I do not know of my own knowledge specifically what the direction of their case is. I suspect that they were into the political area down there prior to what we got involved in. And he was dealing on a different basis down there than he was up in New York. That was when he was discussing the politicians with Herman Weiss. I did not become aware of that until much later on, probably after the covert stages ended that he [98] had had these conversations even.

That was what brought about the consolidation of Weinberg's activities, when Agent Amoroso came in, because there was somewhat of a breakdown in communications between the two offices when he was dealing down there and dealing up in New York. So, that was another one of the reasons for Amoroso becoming involved so he could be completely aware of what his involvement was in the Miami division and also in the New York division. Then at a certain point down the line it was decided that he would sever his involvement in the Miami division and concentrate on the activities up in New York because things had developed further at that location.

Mr. NEAL. And it was the direct result of the September 13 conversation and the October 6 conversation, both in 1978, that Errichetti was brought into the picture. You recognize that?

Mr. GOOD. I would not exactly agree with that, no.

Mr. NEAL. What would you not agree with that on?

Mr. GOOD. That these were the things that precipitated Errichetti coming into the operation.

Mr. NEAL. Why, indeed. Why, indeed, on October 6, Weinberg is talking about the juice in Atlantic City, needing the juice in Atlantic City, Weinberg is. And you are unaware of it; I grant you that. You had not seen the tapes, the transcript. Weinberg on October 6 is talking about needing the [99] juice in Atlantic city to Rosenberg. As a result of that, on November 16, 1978, Rosenberg brings in Errichetti, who says he is the juice man there.

Mr. GOOD. Initially it was, though, for investments in the Port of Camden and other business deals that were described to us that the mayor wanted us to get involved in in Camden. It was after our initial meeting that Atlantic City came up.

Mr. NEAL. I hope you are not being too defensive about this, because I am making no value judgment. All I am saying is that it was Weinberg who told Rosenberg on October 6 that we will invest in Atlantic City provided you get the juice, and it is on November 16 that Rosenberg comes in in regard to investments in New Jersey saying I've got the juice. The juice is Mayor Angelo Errichetti.

Now, that may be good or it may be bad. I am simply saying have not I described the facts accurately?

Mr. GOOD. It was part of it but not the entire picture.

Mr. NEAL. That is the sequence, though, of Errichetti coming in, is it not? And then you meet Errichetti on December 1, 1978, face to face.

Mr. GOOD. Correct.

Mr. NEAL. All right. The problem that I have with this is that the man who is controlling Weinberg is not aware at the time at least that Weinberg is coming out with these [100] scenarios. Now, it may be that he should be complimented for coming out with those scenarios. But what we are asking here: Is that the way an undercover operation starts? It seems to be the way it started in this case. First, in regard to New Jersey politicians it starts Weinberg, Weiss, Weinberg, Rosenberg, and you do not know of those conversations, right?

Mr. GOOD. Yes, we do.

Mr. **Neal**. Well, you do not know the substance of it because you just told me you were not aware.

Mr. **Good**. I, personally, did not know the substance of the Herman Weiss conversation, but the agents who were in the immediate control of Weinberg and working with him day to day were aware of these conversations, I am certain.

Mr. **Neal**. But you were the man, as you testified, who was controlling Weinberg?

Mr. **Good**. No. I was supervising the case.

Mr. **Neal**. Supervising Abscam.

Mr. **Good**. Right. The agents that were under my supervision were the ones at that particular stage that dealt with Weinberg and then advised me.

Mr. **Neal**. When did you learn of anybody of the Weinberg scenario of politicians on September 13, 1978?

Mr. **Good**. I first learned that we were involved with politicians when I was advised that Rosenberg and Eden had the mayor of Camden, N.J., interested in us coming down and [101] talking about investments in his area in the Port of Camden. I think they had some crane leasing or some things of that nature. That is when I first became aware that we were going to be introduced to Angelo Errichetti.

Mr. **Neal**. When did you learn—let us take them one by one because that is the only way I think we can intelligently deal with it. When did you first learn that, on September 13, 1978, Weinberg apparently on his own had said to Weiss: "We've got to get politicians in our pocket," in substance?

Mr. **Good**. I believe I learned that sometime after the covert stage of Abscam ended. I could not tell you specifically.

Mr. **Neal**. Sometime after February 2, 1980?

Mr. **Good**. You are talking about the meeting in Florida now?

Mr. **Neal**. I am talking about the September 13, 1978, Weiss-Weinberg conversation.

Mr. **Good**. It was sometime after the covert stage was ended. I could not tell you specifically when.

Mr. **Neal**. When did you learn that on November 16, Weinberg said and initiated—I think I am correct; if I am not, I hope my colleagues will check me; I think I am right. When did you learn that on November 16, Weinberg was saying to Rosenberg, who came to him apparently for investment possibilities and no initiation of corruption, Weinberg said to [102] Rosenberg: "You've got to have the juice; we'd be interested in Atlantic City if you got the juice," whatever juice means? I am sorry. I am referring to October 6, not November 16. October 6, when Weinberg, talking to a man who had come to him for investment, when Weinberg says to Rosenberg: "You've got to have the juice," and said that on October 6. Now, when were you aware of that specific Weinberg-initiated——

Mr. **Good**. I cannot tell you when I became aware of that. I do not recall after this period of time.

Mr. **Neal**. The fact of the matter is, is it not your best recollection that you became aware of those two conversations not until much, much later, you became aware——

Mr. **Good**. I think I became aware of the conversation between Weinberg and Rosenberg at a much earlier date than I became aware of the Herman Weiss conversation because that was a conversation that took place in New York.

Mr. NEAL. Is it not a fact, to the best of your recollection, I am talking now about October 6, when for the second time Weinberg talked about juice or politicians or protection to Rosenberg, October 6? Is it not a fact that you did not become aware of that conversation until after Errichetti's name was brought in on November 16, 1978?

Mr. GOOD. I would say that would be probably accurate.

Mr. NEAL. So, we go back to the point here. For right or wrong, for good or bad, in answer to Senator Simpson's [103] question, when you juxtapose these two things together, the conversations in September and October 1978 that I am talking about, where Weinberg initiates getting politicians involved, and you juxtapose that with the fact that it is on July 14, that Weinberg articulates the asylum scenario, does not it look like here that Weinberg is creating the scenario? Weinberg is developing the undercover operation. Now, again, I make no value judgment. I know that the FBI after July 26 on the boat trip got word of the scenario and approved bribe offers thereafter. Do you see my point?

Mr. GOOD. I see your point, but I do not think it is completely accurate. Weinberg was spending a great deal of time with agents from the beginning of this operation. There were discussions with the agents. There were conversations concerning different areas that we were interested in. All of these things, I think, were probably things that provoked Weinberg to bring up these matters.

One of the things that we always kept in mind during the course of all of these operations—and we are alert for opportunities—were the priorities that were laid down for the FBI. They were political corruption, white-collar crime, and organized crime. So, even though we did not start off with any of these things in mind, we had this on our mind, that these were the things that the Bureau was most interested in pursuing.

[104] Now, what conversations were held with Weinberg down in Miami with the agents down there, I am not aware of, but it is very possible that these matters might have been discussed with him down there that provoked these ideas to be put out by him.

Mr. NEAL. In our job here we are comparing the nice theories of the undercover guidelines as to how these operations get started and the nice theories and the guidelines of how much premeditation and deliberation and approval process goes into one of these things. But, when you get down to reality, what I have just stated happened. And no 302 was made of the September 13, 1978, conversation, where Weinberg says: we've got to get a politician. No 302——

Mr. GOOD. That was on a tape, was it not?

Mr. NEAL. Pardon me?

Mr. GOOD. It was on a tape.

Mr. NEAL. On the tape. But the point is nobody was reviewing the tape, it seems to me, in those stages. And there was no 302 of the October 6 conversation, when he introduces juice in Atlantic City. Mr. Good, maybe that is just the way these things inevitably develop, but it seems to me there is a difference in the reality of how these things develop than in the nice theories of the undercover guidelines.

I guess I should make that a question and say ain't that so?

Mr. GOOD. I think that it is a debatable issue, and it is [105] a theoretical issue almost.

Mr. NEAL. We have pretty much exposed that area, I guess, unless you want to add, modify, or subtract something.

Mr. REVELL. The entire fact situation that you went through is one thing. The issue of whether or not we would go forward from the point at which a proposal was made and on what basis that proposal was made is an entirely different matter. The approval process sets forth the scenario, the relationships among the various people involved, the criteria required, and when a payment will be authorized. That is an entirely separate issue.

I think you know, Mr. Neal, from your experience that criminal allegations or even the suspicion of criminal activity arise from almost every conceivable situation. It would be very difficult to write any kind of guidelines, statute, or rules that would say it will happen this way and not another way.

Mr. NEAL. I do understand that. But do you not think that it would be better policing of the guidelines if somebody had reviewed contemporaneously the September 8——

Mr. REVELL. There were no guidelines. There were no guidelines in existence.

Mr. NEAL. Yes, there were safeguards and guidelines, and the Attorney General has already said, we have gone over it, that the guidelines that were promulgated in 1981 are in the [106] main the guidelines and practices that we were following during Abscam. Now, that is part of the record here.

Mr. REVELL. I realize that, but there is nothing that says that in dealing with a cooperating witness, an informant, or an individual who may not even know he is dealing with an undercover operation, that that person can present an opportunity without our following up on it. We have to make a decision after considering whether it should be pursued.

Mr. NEAL. Let me say a couple of other things in here. This man Weinberg, who is putting out these scenarios is a man who for a little over a 3-year period was paid $248,000. Now, I grant you some of that was expenses such as clothes. But the truth of the matter is over that 3-year period or 3-year-and-3-month period he was paid by the FBI $248,000. That gives him, does it not, quite an incentive to spin out scenarios and get the Government to follow them. There again, sometimes they are fruitful. Sometimes in some cases they were not fruitful.

Senator MATHIAS. Mr. Neal, we again have a vote. Your last question prompts me to another bit of folk wisdom. I said yesterday that it is an old English proverb, set a thief to catch a thief. Your last comments suggest the ancient wisdom that you never kill the goose that is laying the golden eggs.

[107] Mr. NEAL. Sometimes you've got to goose them a little bit.

Senator MATHIAS. We will recess for 10 minutes.

[Recess taken.]

Senator MATHIAS. The committee will come to order. Senator Rudman?

Senator **Rudman**. I am not sure I can emulate our chief counsel's soliloquies, but I do have a few questions for Mr. Wilson.

Let me preface the questions, Mr. Wilson, by saying that I think it is quite obvious in the course of these hearings that there are essentially really only two central issues that will finally, I think, be addressed, if any are addressed, by this committee and by the Senate. Those issues have to do with the general area of what, to use the Attorney General's words in his 1980 memorandum, what predicate of criminality, if you will, existed to cause any investigation to happen. The two central issues, it seems to me, are how these operations are put into place and what criteria are used to either change the direction or expand them. And that is something that is more of a policy question which Mr. Revell could discuss. The second issue, of course, has a great deal to do with probable cause and how these criteria, once implemented, work.

I want to come back to the Pressler case because I think that the way that you improve operations is not to look at the [108] best case but to look at the worst case. I examine you on this not critically but just in terms in retrospect. Having been in the position that you were in for some time and giving fast approvals, particularly in narcotics cases, I can understand that the decisions must be made. I think this is different from a narcotics case, as we discussed with Mr. Mullen yesterday.

When you received the telephone call from Mr. Good, it was Mr. Good who telephoned you or Mr. Amoroso?

Mr. **Wilson**. Mr. Good.

Senator **Rudman**. He advised you of the change in circumstances, that Mr. Silvestri, in fact, had a new subject that he proposed to bring into the operation. What specifically did you physically do over the next half hour?

Mr. **Wilson**. The first thing I did when I talked to Mr. Good is I wanted to find out the circumstances, whether or not the person that was being brought in knew why he was being brought in and if the criteria that we had set up were going to be met. The next thing I did was I prepared an addendum, because we did not have a lot of time to prepare a memo, and I talked with my superiors. We walked that information through the various levels.

An indexes check was requested, but certainly it takes a little bit longer than the time we had to receive that information, keeping in mind, as far as we were concerned at the time, we had enough [109] information.

That is the process I went through. I went to my unit chief, section chief, and on up the line and discussed the information I had received from Mr. Good.

Senator **Rudman**. Now let me switch to Mr. Good for a moment. Did you converse with Mr. Silvestri during that call?

Mr. **Good**. No. Mr. Amoroso.

Senator **Rudman**. Are you aware of that conversation?

Mr. **Good**. Yes, I was.

Senator **Rudman**. In detail?

Mr. **Good**. Yes, I was.

Senator **Rudman**. Do you happen to know if Mr. Amoroso inquired as to Mr. Silvestri as to each of the criteria that Mr. Wilson has just cited?

Mr. GOOD. I am certain that he did.

Senator RUDMAN. Do you know whether or not he asked Mr. Silvestri whether or not he personally had spoken to the Senator about this question?

Mr. GOOD. I am sure that he did indicate that he had spoken personally to the Senator, yes.

Senator RUDMAN. In fact, if that is true, then Mr. Silvestri lied when he answered the question. Had he told the truth, the truth, of course, would have been that he would not have known Senator Pressler had he fallen over him. Is that not true?

[110] Mr. GOOD. That is correct.

Senator RUDMAN. You have been in this business a long time, Mr. Good. I have looked at your record, and it is a good record. You are a very experienced investigator. I think you understand human nature. You know what all the risks were. Would you please tell the committee what you think Mr. Silvestri's motivations might have been to make such a blatant lie, putting himself into such an incredible position as to be bringing a U.S. Senator in before the cameras, knowing that he had not even met him at the moment he was speaking to Mr. Amoroso? He had not met Senator Pressler at that moment.

Mr. GOOD. First of all, Mr. Silvestri did not know he was bringing anybody before the cameras.

Senator RUDMAN. I understand that.

Mr. GOOD. He apparently felt that he could con Senator Pressler into going along with whatever the scenario was. That was the only thing that I could figure out why he brought a man like this in.

Senator RUDMAN. Precisely. That is the only answer. And anybody in law enforcement dealing with the Silvestris and Errichettis of this world know that is exactly how they think. So, that, of course, illustrates a danger that exists with this system, the danger being that you put something into motion in which an innocent person is conned, maybe sometimes unknowingly into a situation that could be very compromising. You would [111] agree with that?

Mr. GOOD. Yes, I do.

Senator RUDMAN. Mr. Wilson, how long had you been on your assignment at the time that this particular event occurred?

Mr. WILSON. I was in the position since February 1979. So, it would be approximately 8 months or so.

Senator RUDMAN. Had you spent a great deal of time in Washington prior to that?

Mr. WILSON. No, I had not.

Senator RUDMAN. When you got the call from Mr. Good and he mentioned Senator Pressler, did that name mean anything to you?

Mr. WILSON. No, it did not.

Senator RUDMAN. So, you had to corroborate whether there was a Senator Pressler who in fact was a Member of the U.S. Senate?

Mr. WILSON. That is correct.

Senator RUDMAN. Mr. Wilson, I am going to ask you a question which is probably a difficult question to answer. Well, it would be very easy to answer, but I would like you to give it some amount of thought in your present position and try to answer it for me.

Had you received that telephone call and, instead of it being Senator Pressler, you were told that it was the majority leader of the U.S. Senate that was with Mr. Silvestri or the minority leader of the U.S. Senate at that [112] time or a Justice of the U.S. Supreme Court by name, all three names which I assume you would have recognized, would that have given you any pause at that moment? Or do you think you would have handled it differently?

Mr. WILSON. Under the same set of circumstances, no.

Senator RUDMAN. So, under those circumstances, even though you knew the name and even though it would have been like throwing a splash of cold water in your face, you would have said: Well, fine, bring Senator X or Y or Justice so and so?

Mr. WILSON. I did not say fine. I did not approve it. I recommended things and told my superiors the circumstances that occurred. It would have been up to them to authorize anything.

Senator RUDMAN. Do you think your superiors might have reacted a bit differently?

Mr. WILSON. I am sure they would have acted surprised. I do not know if they would have acted differently. They would have to answer that.

Senator RUDMAN. Senator McClure said try the name Webster, and that was my next question. What if it had been a high FBI official?

Mr. WILSON. The same rule——

Mr. GOOD. Bring 'em in.

Senator RUDMAN. Well, maybe even more so in that case; I can understand that.

[113] Mr. REVELL. Senator, let me comment——

Senator RUDMAN. Before you do, I just want to say to Mr. Wilson that I guess the thrust of my questions is that these criteria have to be implemented by human beings. I think there has to be a certain amount of subjectivity as well as objectivity. I would suspect that, had it been the majority leader of the Senate or the minority leader of the Senate, men of impeccable public reputations, or a Justice of the U.S. Supreme Court, that somewhere along the line somebody would have said: Wait a minute, let's make sure that these conditions precedent exist. This whole system operated on a very unusual system. The safeguards were most unusual in that they had several fairly easy-to-meet, tough-to-corroborate conditions precedent, but the conditions subsequent were very tough conditions.

Of course, once Senator Pressler got in there, Silvestri is heard to say the Senator is not really sure why he is here. That was the code word, although we did not know he was giving it, that you could not go beyond that.

Mr. WILSON. Correct.

Mr. REVELL. We had a situation in which a Congressman did raise the name of a person of that stature who sits in this body. He raised it in a context that did not meet the criteria for a meeting. He was told what would have to be satisfied before there would be a meeting. He indicated that [114] he would attempt to do that, and he, of course, could not. If indeed those same criteria had been met, even though we would have had our doubts, there would have been such a meeting; and the same safeguards would have applied.

I was involved in that final approval process and was discussing it with the Director. As Mr. Heymann said in his testimony, when the President's name was brought up, we would have gulped hard and gone ahead. I can assure you that that is what we would have done.

Senator **Mathias**. Would you yield for clarification? Mr. Revell, you said a member of this body?

Mr. **Revell**. The name was brought up by a Congressman, yes, sir.

Senator **Mathias**. By this body, do you mean this committee?

Mr. **Revell**. No, sir. I mean the Senate of the United States.

Senator **Mathias**. Not a sitting member of this committee?

Mr. **Revell**. No, sir.

Senator **Rudman**. I believe this is the testimony already adduced previously——

Mr. **Revell**. Yes, Senator Thurmond.

Senator **Rudman**. This is the Jenrette-Thurmond case he is referring to, Mr. Chairman.

Mr. **Revell**. That Senator Inouye brought up when I [115] testified Tuesday.

Senator **McClure**. Does that indicate that a Congressman is a less reliable middleman than the corrupt middleman?

Mr. **Revell**. No.

Senator **McClure**. Well, that's what you said.

Mr. **Revell**. No——

Senator **McClure**. If it had been a corrupt middleman, you would have gone ahead; but, since it was a Congressman, you did not believe it. [Laughter.]

Mr. **Revell**. I did not mean to imply that, Senator. What I meant is that he did not make the same representations to us that the middleman did. Other Congressmen did bring in other Congressmen and we did proceed on the basis of some of their representations.

Senator **Rudman**. Mr. Revell, let me just proceed with you for a moment. I think I have the answers that I anticipated from Mr. Wilson, from Mr. Good. Again, it is not our position to make value judgment at this time. We are just looking at the whole system.

I want to ask you a policy question. It really is a side of a question I discussed with you 2 days ago when you were here. If you want to wiretap the telephone of anybody in this country, with certain exceptions, national security, emergency situations, but normal criminal investigation wiretap, public [116] official, private citizen, you must get a court order. You must show certain probable cause. That conversation, at the very best, will yield evidence that will indicate that there was a track to follow in order to get an indictment by other investigation. Yet, in these situations, since there is no such law that exists—and I am not suggesting there ought to be—you will make the offer of a bribe to what well could be a perfectly innocent person, based on the representations of people who are corrupt themselves and by, you know, Mr. Good's very accurate answer to my question, people who may be out to con people for whatever reason. That is the nature of these people.

On the one hand, you must get a court order under the statutes as we have passed them federally and in the States to get evidence of criminality. On the other hand, on what could possibly be totally unreliable information, you can put a person in a situation that may not compromise them, because they can always say no, but can really taint their reputation. Does that trouble you at all in terms of how you might tighten up your criteria?

Mr. REVELL. I think the comment you made, that we would make a bribe offer on totally inaccurate information, is not so, Senator. We would have, as every instance in this case proved, reliable information, as has been tested in each of the cases, before there was a bribe payment. The fact that an [117] individual could come into this scenario, as Senator Pressler did, be totally innocent, and be subjected to later adverse publicity is, of course, troublesome to us. It is troublesome to us to see what has happened to high executive officials when there was a great deal of speculation about their activities, most of which we have never been able to establish. We recognize that there is a severe problem here, but the alternative is to have a probable cause standard before we ever have such a direct confrontation. That would result in public officials being almost totally exempted from any type of process that would allow us to root out a crime which by its very nature is covert, is not detectable by normal means, is a consensual crime between two parties both of whom know they are committing a crime. The public could not become aware of the crime.

Perhaps only the Congress can determine if the risk of possible harm to a person's reputation is worth the ability of law enforcement agencies to interdict ongoing consensual covert crime.

Senator RUDMAN. Let me just respond. My time is up. But, since I yielded a couple of minutes, Mr. Chairman, I would like to take about two or three more, if I may.

Senator MATHIAS. Without objection, the time will be extended.

Senator RUDMAN. I would like to carry this just a step [118] further. It seems to me that what you say, of course, makes great sense in a number of investigations. But there are situations—and I think we have discussed one here today and yesterday—in which there is a great risk of moving too rapidly and depending on people who are unreliable to start out with. Certainly, Silvestri, Errichetti are people who in many ways are unreliable, although in many cases their evidence obviously proves to be true. And I commend you for that. I mean, you have had some very successful prosecutions and you had no choice but to follow.

But in that particular case, the one I am speaking of, it just seems to me that the fact that this man's name had never appeared before, never the subject of any authorization, you get an instant authorization based on someone, you know, as it turns out in retrospect, was picked up in a car 15 minutes before he walked in the room, indicates to me that there ought to be more effort in that kind of a case to corroborate to try to make sure that does not happen. Obviously, there is disagreement on this committee. I happen to believe that, if a public official or a person of some reliability such as an Errichetti, who falls in certainly the first category of being a public official, says that A, B, C, and D are apt to take bribes, then I think you probably have to follow that through. But when it comes from a Silvestri, who is a little more removed from the process, at least you could have checked to [119] see if he knew him and under what circumstances.

I think that your criteria ought to be reviewed. I am not sure we ought to be passing any laws telling you how to run an undercover operation. There are too many laws as there are. But I think that raises some very serious questions as you look at that whole transcript.

I am not criticizing Mr. Wilson. I am just making a general statement about the fact that there ought to be a little bit more corroboration in this kind of situation.

Mr. **Revell**. We certainly do learn. We had never faced an undercover operation like Abscam in our history. In the majority of instances the representations of the corrupt influence peddlers were proven to be correct. That probably indicated to us that there was a likelihood that they would be correct. There were certain built-in incentives for them to be correct. And we knew of the final guarantees that we always utilized in the scenario.

I would say this. Given today the same set of circumstances as those in the Silvestri situation, I probably would attempt to impede developments until we made a closer examination. Now, that is a value judgment. I cannot say that set of circumstances will ever be exactly duplicated. But in determining whether to go forward to the Director, if it is at that level, or to make the decision myself at another level, I am certainly going to want to know what [120] verification is available to us by track record, by outside corroboration or whatever before we go forward with that contingent authorization.

Senator **Rudman**. This is my last comment or question, Mr. Chairman. I think the ludicrous part of that, when you look at what actually happened—and this is a nonpartisan group and a bipartisan committee, and I make this as a nonpartisan remark—it is ludicrous that on the way to the location Silvestri is talking to Senator Pressler about these businessmen who he is going to meet with and he is talking about political contributions. And he makes the comment: Of course, I'm not sure if they'll want to contribute to you because they have only contributed to Democrats. I thought that it was ironic when you consider the indictments that had resulted heretofore. Pressler walked into that meeting thinking for a while that he was going to meet businessmen who were interested in making Larry Pressler President. The fact of the matter was that Silvestri must have got cold feet although I am sure, Mr. Good, that he intended to con Senator Pressler but right away found out that that probably would not work.

I just think that, when we are all done here, this and some other items in the file which we may or may not discuss before the hearings are over indicate a need for maybe more safeguards than we have because these safeguards, you will admit, mainly rely on conditions subsequent, not conditions [121] precedent.

Mr. **Revell**. The safeguards protected against the innocent's being charged with a crime. They did not protect against the innocent coming to the meeting.

Senator **Rudman**. That is absolutely correct. We agree on that, Mr. Revell. Thank you, Mr. Chairman.

Senator MATHIAS. Normally, we would revert to Senator Huddleston—I thought Senator McClure wanted to interject at this point. Senator Huddleston?

Senator HUDDLESTON. I have just one point on that Pressler situation. I am wondering, has it ever been said by Silvestri that the fact that there was a third party present during that brief period of time he had to so-called brief Senator Pressler inhibited him from following the instructions and making sure he knew he was——

Mr. GOOD. That was never discussed with him, to my knowledge.

Senator HUDDLESTON. There was a third party present, was there not, a lady fundraiser who——

Mr. GOOD. She did not come into the house. She was in the car.

Senator HUDDLESTON. But she was with him from the time that Pressler met him——

Mr. GOOD. Yes, that is correct. To my knowledge, that was never discussed with Silvestri as to whether or not that [122] affected his approach to Senator Pressler.

Senator HUDDLESTON. The fact is he did not present the situation to Senator Pressler as it was intended to be.

One area that I have pursued with Mr. Mullen is the timing and the decisionmaking process involved when the investigation moved more toward the Congress at least than it had been or had already before the late July 1979 boat ride out of Florida, in which Agent Amoroso told the group he was with that his representatives may be interested in solving some of their potential immigration problems by using some congressional help. I believe that occurred in late July 1979. Prior to that, Senator Williams had already been brought into the investigation. I do not know of any other Congressmen that had been. Perhaps there had been one mentioned but there had been no direct approaches made at that time. There had, of course, been other political figures, State and local officials that had become involved.

My question is, whether or not prior to—and my view of it is that, once Amoroso projected this possibility to the particular people that he did, and they immediately, of course, took the bait and said, yes, we know Congressmen who will do that, then from that point on the Congress was, in fact, if not a target, certainly it was susceptible. And that represents, I think, a major change of direction of the Abscam undercover operation.

[123] The question I have is this: Prior to Amoroso making that suggestion in late July, was there a decisionmaking process brought to bear on this particular question? Did he go to that event fully intending to make this suggestion on the basis of a decision that had been made that there was probable cause, this was a problem crime area, as the guidelines indicate? I guess maybe Mr. Good and Mr. Wilson both would have been involved if there were such a decision made.

Mr. GOOD. There was no decision made prior to Mr. Amoroso going on the boat. During your absence, I went into a little bit more detailed explanation as to how that transpired. If you would like, I——

Senator HUDDLESTON. I do not think we need to repeat it.

Mr. GOOD. No, there was no deliberate decisionmaking process put into effect prior to Mr. Amoroso going into the boat.

Senator HUDDLESTON. Was there after?

Mr. GOOD. Yes, there was.

Mr. REVELL. Senator, you also indicated that Agent Amoroso brought up the Congress. I believe you testified that he did not mention Congress.

Mr. GOOD. To the best of my recollection, on the meeting on the boat he did not mention Congressmen. He mentioned the problem of the sheiks wanting to come over to the country but made no mention of Congressmen. That was brought up by——

[124] Senator HUDDLESTON. Did he suggest a remedy for them or how a remedy might occur?

Mr. GOOD. To the best of my recollection, and I cannot be fully accurate, he mentioned it would be a problem and just threw it out for them to come up with the remedy.

Senator HUDDLESTON. But since that is a fictitious thing and, you know, he must have had in mind some kind of reaction and there is hardly any other way to address it except through the Congress, would be my guess, so——

Mr. REVELL. There was also an INS scenario involving an INS officer. There were other possible options that they might have come up with.

Senator HUDDLESTON. Are you saying at that point Agent Amoroso himself did not intend or did not necessarily—this was not necessarily an objective of his, to move toward the Congressmen?

Mr. GOOD. Based on my knowledge, that was not his objective. But what was in his mind at that time, I really could not say.

Senator HUDDLESTON. But did that represent a substantial change from the directions the operation had been going?

Mr. GOOD. I do not think substantial because we already were in the political corruption area dealing with Errichetti that may have changed the scenario.

Senator HUDDLESTON. Once that suggestion was made by [125] Amoroso and the response was given by those present, did he then come back through the normal process and ask for clearance or approval?

Mr. GOOD. Immediately upon him having presented that idea, he advised me about it. I advised the appropriate people above me that this approach had been presented. Then immediately upon the receipt of additional information of Errichetti and Criden following up on the suggestion, it was put into the approval process.

Mr. WILSON. We received the information in August, early August, at which time it was presented.

Senator HUDDLESTON. And then the names began to come pretty shortly thereafter?

Mr. WILSON. Yes, sir.

Senator HUDDLESTON. Am I totally wrong when I suggest that actually, once he made this suggestion, given the fact of the people that he made it to, that he did in fact launch the investigation into that direction, the direction of Congressmen?

Mr. GOOD. I would say that would be correct.

Senator HUDDLESTON. So, in effect, the operation did change directions before there was any headquarters consideration given to it. Is that right?

Mr. REVELL. Not the investigation, Senator. An undercover scenario is a continuing dialog among the parties [126] who are attempting to find ways to accommodate each other's interests. No agent acting in an undercover capacity has authority to go forward on his own. He may mention a lot of things, but he has to come back. It had to be considered at the appropriate levels all the way to the Director and to the Assistant Attorney General before there was approval for that process.

So, the germ, the idea, the original possible avenue, later followed by the obvious interest of Errichetti and Criden and others, certainly emanated from that point and possibly even, as Mr. Neal has indicated, some conversations that preceded it. But, again, there was the approval process. Nothing could happen, nothing would happen until it was totally reviewed and approved.

Senator HUDDLESTON. That is the point, though, where I disagree with you. Things not only could happen, things did happen before the approval. Once the middleman, who you cannot control totally, once they had the germ of this idea, once they had the possibility that, by using their contacts, they had another avenue of making some money maybe, then they were off and running. They did not wait for the approval project. Your people did. Amoroso had to wait once he told you. And all the other operations and certainly the operation of the house where the bribes would be actually made, that all had to wait, of course, until the approval process was complete. But the [127] corrupt middlemen, as soon as they got off that boat, in my judgment, they were already making their contacts because they saw a new field here. So, once they did that and once they brought a name to you of a person who was willing to take a bribe, if you were going to be consistent, then you had to give that person an opportunity to receive that bribe if the middleman could bring him in.

So, in effect, the machinery was in motion before the approval process was even started. If you had decided not to go that route, if for some reason you had said we do not want to go in that route, then you would have had to take some action to stop it. You would have had to somehow tell these people, get the word to them that this was not going to work and that your man was not really interested in pursuing that field.

Mr. REVELL. No Congressman was brought up by our people.

Senator HUDDLESTON. I understand that.

Mr. REVELL. I think you are absolutely correct. Once they came back to us and raised the question whether the people whom we have dealt with in the Congress can help, then we had to make a decision. Do we pursue it or do we not pursue it and, if we do pursue it, under what circumstances. Those were the decisions that we had to make.

Senator HUDDLESTON. The only question I have is how the thing can change directions before you get a chance—when you [128] are dealing with people out there that you do not have total control over, how it can change directions without you really getting a chance to put into place the approval process. Now, I recognize the safeguards. It does not mean that you are going to really do too much damage to anybody, but at least you have got these people out there working.

Mr. Good. Senator, there were a couple of situations early on where people came to us with legitimate proposals. Immediately we just took the position, well, we are really not interested; and they departed and never came back to us. But, unless you lay out some type of need, these people are not going to deal with you. That is why these ideas have to be presented to them. If they are interested in pursuing them, we will listen to them.

Senator Huddleston. I understand that. I just wonder why a specific idea would be presented without having been approved on the assumption that they may——

Mr. Wilson. Because it was accidental.

Senator Huddleston. It was accidental?

Mr. Good. There were a lot of ideas that we threw out in a very similar fashion. We suggested that we might be interested in jai alai if it went into Jersey but never developed for one reason or another.

Senator Huddleston. I can understand that.

The guidelines that you now have in place as they [129] developed over a period of time—I think Mr. Mullen said that even the activities during Abscam caused certain guidelines to be altered or new ones put in. Would that be handled any differently now, do you think, a situation similar to that, where you are going to give the opportunity for a new direction?

Mr. Revell. If we have an approved undercover operation within a certain area, and we devise an entirely different direction, then a review process at Headquarters involving the undercover review committee and the various levels of authority is required. It has to be approved by me or by the Director. It does occur. Now, that does not mean that we can totally control the dialog among the undercover agents, any cooperative witnesses, and any individuals we have under investigation. If a change does occur, then a judgment has to be made: is this a significant change in direction; is it going to change the scenario or the types of crimes to be detected and so forth. We have to make these judgment calls all the way down the line.

If it is deemed a significant change of direction by anyone in the approval process, then the operation will go back through the review procedures.

[130] If we are working an undercover operation against the theft of heavy equipment going from Oklahoma down into Mexico and we receive an allegation that a State district attorney is shaking down some thieves, then the operation has to be reconsidered at Headquarters before we will approach any bribery aspects. We also would follow our separate bribery guidelines, which contain very specific criteria and require certain approval levels.

In the real world, as you well know, we are faced with these dilemmas frequently. We have to make these judgments and decisions as we go. The guidelines do call for a reconsideration when we have a significant change in direction.

Senator Huddleston. I guess you are making the case that, since you are already in the political corruption area, just the fact that you move toward politicians who happen to be in Congress versus politicians who happen to be in——

Mr. REVELL. No; my view is that today that particular scenario would go through under the undercover committee process before we would proceed with it. We would have had time, I think. If we had an emergency situation, the guidelines give us certain authority to proceed. But my view is that we would have proceeded through the undercover review process prior to moving in this direction.

Senator HUDDLESTON. My time has expired.

[131] Senator MATHIAS. Senator McClure?

Senator MCCLURE. Thank you, Mr. Chairman. I think we have gone into this question of what happens down to the point of the meeting. As I understand, the directions given to your agents is that, if they do not meet these criteria, you break off the contact; you do not offer the bribe. Is that not correct?

Mr. REVELL. That is correct.

Senator MCCLURE. In the Pressler case, although it started out almost the initial statement in the meeting was Senator Pressler doesn't know why he is here, that was a breach of one of the conditions at the very beginning. Is that not correct?

Mr. REVELL. Yes; that was a breach of the representation that Mr. Silvestri had made to us.

Senator MCCLURE. That was also one of the conditions precedent.

Mr. REVELL. Well, there had been other situations in which public officials had come to meetings and indicated that they were not aware. You cannot just stop there because they may be going through a sham, a pretext, in order to feel you out and so forth. There is enough discretion on the part of the agent at the meeting to make sure that there is not an attempt to obtain money without [132] certain representations.

Senator MCCLURE. All right. You have seen the Pressler tapes, I am sure, like all the rest of us have.

Mr. REVELL. Yes, sir.

Senator MCCLURE. Did you doubt the middleman's statement that Mr. Pressler did not know why he was there?

Mr. REVELL. Of course, I did not see it until after it had occurred.

Senator MCCLURE. I know. But you have seen it since.

Mr. REVELL. No; I think it is very clear from the outset that Senator Pressler was there under false pretenses.

Senator MCCLURE. If it was very clear at the outset, why then did the meeting go on for over 30 minutes before finally it was broken off?

Mr. GOOD. I think I could respond to that, Senator. I do not think that the undercover agent wanted the appearance given that, if you're not here for an illegal act, get out, you know. He wanted it to seem like a natural flow of conversation where, OK, we know you don't understand, but this is what we're interested in, and if you could help us, fine, if not. He did not want it to appear that, hey, if you're not here to commit an illegal act, get out, that type of situation. He wanted it to appear like a natural meeting.

Senator MCCLURE. I can understand the statement, but I cannot apply it to the circumstances.

[133] Mr. GOOD. You see, we are trying to make this appear like a real-life situation, not like we are bringing people before cameras to commit a crime.

Senator McClure. I understand that, but——

Mr. Good. That is what went through the agent's mind at the time, if he immediately terminated the meeting and asked him to leave, it would not appear like a real-life situation.

Senator McClure. Well, it would seem to me it was real life if a guy was being brought in to do a certain thing, the representation was made by the middleman that he was being brought in for something. And the minute he walks in the door, he says, this guy doesn't know why he's here. I would say, hey, wait a minute, step him outside the door, and we are going to have a little conversation before we go on.

Now, that would not have broken the meeting off.

Mr. Revell. That did not happen at the outset, Senator. The first thing they started talking about was Senator Pressler's running for President. They went for some period of time talking about how important he was, how much influence he had, and so forth. Of course, Silvestri was trying to puff up that he had been able to reach out and get hold of such a significant individual. So, that went on for some time.

Senator McClure. Some few minutes but certainly not even half the meeting, though.

Mr. Revell. And then they talked about campaign [134] contributions before he said that he's running for President; he might need some help in his campaign.

So, there were several things that happened. It did not just come out that Silvestri walked in the room, says he doesn't know why he's here, now let's see if we can do business.

Senator McClure. Well, it came across to me in that context, certainly not the very first statement but that was very early in the meeting; and the meeting continued for quite a little while afterward. I know that we are looking at this with 20-20 hindsight with the benefit of a lot of other information that was not readily apparent at that time. But I am concerned that that meeting went on as long as it did before it was broken off. I am also somewhat concerned with the fact that it took 2 years for the FBI to admit they had made a mistake. I do not think the FBI deliberately leaked the information, but it did get into the public press. It seems to me, when you set a dangerous instrumentality into motion, as you do when you have a corrupt middleman there, you know the man is corrupt, you know that he is a liar, a con man. You give him money and a license to go out to involve people; you seem to indicate that you do not have a great sense of responsibility for what he does because you can correct it at the time the meeting takes place if indeed he runs amuck in some way. And then, after you find that he has, it has been [135] leaked to the press——

Mr. Revell. No, sir. Senator Pressler is the one who announced to the press that he had had a meeting. We did not. It did not leak out. There was nothing in the public record until Senator Pressler stated it himself.

Senator McClure. All right. Regardless of how it got there, do not you feel you have a responsibility once it gets there?

Mr. REVELL. Senator Pressler met with the Director very shortly after that. There were statements issued that he was not criminally involved in the case. I think that——

Senator McCLURE. And the Director later in public comments said we never investigate anybody unless we have reasonable cause to believe they are involved. That is not exactly what his words were, but that is the import of what he said.

Mr. REVELL. Senator Mathias read a statement the Director had read into the record about how we view our obligation when we have received an allegation that is sufficient for us to proceed. The fact in the Senator Pressler case is that he was never offered a bribe. It was clear to the agent after the conversation had carried on for a few minutes that he did not know why he was there. We have never considered Senator Pressler a suspect. He has never been considered a subject of the case. He was never considered for indictment. It has been certified [136] by the Attorney General and the Director that he was not. And we did not release the information; he did.

I do not know what else we could have done to try and protect his reputation.

Senator McCLURE. You could have come forward with that statement earlier than 2 years after the event or nearly so.

Mr. REVELL. It was not 2 years.

Senator McCLURE. It was virtually on the preceding action on the floor of the Senate before that statement came up, a clear statement that he sought and could not get for a long period of time. Now, he did not ask for this problem.

Mr. REVELL. I agree with that.

Senator McCLURE. I understand the difficulty that you have in making the choices and decisions you have to make in investigating this kind of corruption. I think you also have the same kind of problem in determining whether or not a businessman is legitimate or is partially legitimate and partially criminal.

Mr. REVELL. That is true.

Senator McCLURE. But once that has surfaced in the public press, regardless of what the reason may be that it got there, and you have made the determination that there is nothing to it, it seems to me that you at least have the responsibility at that time to make very clear indeed that there is nothing to it. You had nothing to protect at that time, did you?

[137] Mr. REVELL. No, sir.

Senator McCLURE. The cover had been blown on the operation so far as Mr. Pressler was concerned.

Mr. REVELL. Of course, Mr. Pressler did not come forward and make that statement until after we had served subpenas and it was in the newspapers that there was such an investigation.

I think you should—and maybe counsel later will do so—address these questions to Director Webster and to Mr. Heymann and those people who made that decision. I did not make that decision nor did these two gentlemen. But I can tell you that we never considered Senator Pressler a suspect. He certainly was not a suspect. Once that meeting was over, we did not pursue him in any way.

Senator McCLURE. I understand that. I think the record is abundantly clear at this time that that is the case. But it took a long while to make that record abundantly clear to the public. During that period of time, Senator Pressler was under suspicion.

The only reason I focus on his case is because that is one that has been much discussed. There could be an infinite variety of others, whether it be undercover operations to discover corruption, or whether it be a sting operation, or the investigation of businesses which are fronts for illegal operation.

[138] Mr. REVELL. It is difficult to determine when to certify that someone is innocent. Every time you close a case are you going say the person is innocent or that you did not have enough evidence to go to the grand jury or that you simply could not make the case? In this instance it was very clear, but I think it might be somewhat more complex than it was in this one situation.

Senator MATHIAS. Let me inquire of the members. Senator Rudman, do you have another round of questions?

Senator RUDMAN. I have just one question. I know that counsel has quite a few more questions.

Senator MATHIAS. We will return in 10 minutes.

[Recess taken.]

Senator MATHIAS. The committee will be in order.

Gentlemen, you have been testifying for a long time. We are not going to hold you much longer, but Senator Rudman has just a few questions.

Senator RUDMAN. I was just getting to this question when time ran out before. I guess this would be for Mr. Good. What was the action taken in regard to Mr. Silvestri after this situtation, which was a pretty serious situation, the Pressler situation? Obviously, we all understand that he thinks you are shady businessmen, and I understand all that. How do you handle it at that point?

[139] Mr. GOOD. I think that there are audio and video tapes showing that we landed on him very harshly and told him very specifically never to put us in this situation again and that, if it was not clear to the person he was bringing in, do not bring him. And we did not want him bringing anybody that he did not know and had not done business with before. I believe there are transcripts showing that he was advised of this.

Senator RUDMAN. Was he asked whether or not he had ever known Senator Pressler before all that happened?

Mr. GOOD. I do not recall that specifically.

Senator RUDMAN. Was he used again in other instances?

Mr. GOOD. Yes, he was used after that, I believe.

Senator RUDMAN. That raises serious questions in my mind. Again, this goes beyond the scope really of this hearing. This hearing is not designed as an ongoing FBI training program because nobody here is qualified to teach the course. But I have to tell you that, when a man brings a U.S. Senator into that kind of a situation, Mr. Good, and obviously is a gold-plated, blue-ribbon, first-class, triple-A-rated liar, that is the end that I would have had with him as attorney general of New Hampshire, I'll tell you. That is the last time that I would have dealt with him. And I have to tell you that I do criticize that. That is all I have.

Senator Mathias. Mr. Wilson, very briefly, you said, I believe, that you had been involved in about 17 of these [140] operations?

Mr. **Wilson**. There were 17 undercover operations, one of which was Abscam, yes, sir.

Senator **Mathias**. But were they concurrent?

Mr. **Wilson**. For a period of about 9 months they were running at the same time, yes, sir.

Senator **Mathias**. I am just wondering how much attention you could give to each one. I ask that out of our own experience around here. If you only have one thing to do in a day, I find you do not do that too well; you do not get charged up. If you get four or five things to do, then you get your adrenalin up, and you may do them well. But then if you get more than that, you begin to slough off again in quality because you just cannot handle that many things at once.

Obviously in life not everything is at the same level of intensity every hour of every day. But how did you handle that many things?

Mr. **Wilson**. No. 1, they certainly were not as complex as this one. They did not require every hour or every minute of my time during each day. There were certain requests. As this case got more complex, it was seen fit by my superiors to take me away from those cases and certainly just have my attention to this one.

Senator **Mathias**. I think that that is the question that is pertinent for us in this committe, whether you had the kind [141] of physical support that was required or whether you were running on too thin a margin, whether you felt that you had too much to do.

Mr. **Wilson**. I thought at the time that I was taken off the other cases it was getting to that point. Certainly it was the right time to do that.

Senator **Mathias**. But there were the resources in the bureau that, when that time came, you could be relieved so that you could devote the adequate time?

Mr. **Wilson**. Yes, sir.

Senator **Mathias**. And you do not feel that the time and attention pressures affected your judgment?

Mr. **Wilson**. I do not think so, no, sir.

Senator **Mathias**. I have one other question . We have devoted a lot of time this week to discussing what has come to be known as the asylum scenario. I am wondering if you ever had occasion to talk about what has come to be known as the asylum scenario with the agents who were working in Abscam, drawing on your previous involvement with any similar kind of scenario?

Mr. **Wilson**. No, I did not. That was an operational function by the agents in the field. I was solely——

Senator **Mathias**. So, you never had any conversation of that sort?

Mr. **Wilson**. Not when that scenario came up, no, only to [142] discuss the fact that the scenario was coming.

Senator **Mathias**. And there was no conversation about congressional involvement and providing asylum for some Arab——

Mr. **Wilson**. Not that I recall.

Senator **Mathias**. If there are no further questions, counsel?

Mr. **Neal**. We will save them until Tuesday, may it please the Chairman.

Senator **Mathias**. Gentlemen, we appreciate your attendance here today. We appreciate the further fact that you have agreed to come back and be available at the time that Mr. Puccio is here.

There being no further questions, the committee will stand adjourned until 10 o'clock on Tuesday morning.

[Whereupon, at 3:50 p.m., the committee was recessed.]

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

TUESDAY, JULY 27, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 318, Russell Senate Office Building, Hon. Charles McC. Mathias (chairman of the committee) presiding.

Present: Senators Mathias, Huddleston, Leahy, Inouye, and Rudman.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy chief counsel.

Senator MATHIAS. The committee will come to order.

Today, we have Mr. Good returning to the committee. Since you were sworn previously, the oath administered to you last week will, of course, be binding on you during further meetings of this proceeding.

Mr. GOOD. Yes, sir.

Senator MATHIAS. We are also very happy to have Mr. Thomas Puccio, who will appear before the committee this [2] morning.

Mr. Puccio, have you received a copy of Senate Resolution 350 and of the rules of the committee?

Mr. PUCCIO. Yes—well, the resolution, I received in the mail; the rules are in front of me.

Senator MATHIAS. You will be, then, familiar with the fact that all testimony given before this committee will be under oath, so if you will rise, I will administer the oath at this time.

Please raise your right hand. Do you swear that the testimony you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. PUCCIO. Yes, I do.

Senator MATHIAS. Mr. Neal.

Mr. NEAL. Mr. Chairman, if we could get Mr. Puccio's background and qualifications in the record and his role and responsibilities in the operation known as Abscam, perhaps I could then finish up with Mr. Good, but at that point, if Mr. Puccio—if they need to confer, that would be fine, too.

Senator MATHIAS. Let me ask Mr. Puccio, then, to give us a narrative of his relationship to this matter known as Abscam.

STATEMENT OF THOMAS PUCCIO, ESQ., BOOTH, LIPTON & LIPTON, NEW YORK, N.Y.

[3] Mr. Puccio. Well, first of all, I am a member of the bar of the State of New York and a member of the bar of the District of Columbia. I was admitted to the New York State bar in 1969, upon my graduation from Fordham Law School. Immediately upon leaving law school, I entered the U.S. Attorney's office in the Eastern District of New York. For approximately 2 years, I served as an assistant U.S. attorney, handling general criminal work, both investigative before the grand jury and as a trial assistant. From 1971 until 1973, I was chief of the narcotics section, the international narcotics Section, in the U.S. Attorney's office. From 1973 until 1976—and by the way, that section, of course, handled the prosecution of major narcotics traffickers—from 1973 until 1976, I was head of the criminal division in the Eastern District, and during that period of time, I supervised at one time or another anywhere from 30 to 45 other assistant U.S. attorneys in all facets of criminal work.

In 1976, at the end of the year, I was appointed head of the Organized Crime Strike Force, which is run by the Criminal Division of the Justice Department, as you well know, and I served as head of the strike force from December 1976 until May 14 of this year, and at that time I entered private practice and am a member presently of the law firm of Booth, Lipton & Lipton on Park Avenue, Manhattan.

[4] During the period of time that I headed up the strike force, the strike force had three major priorities: Public corruption, labor racketeering, and a third priority, which has often been referred to as the infiltration of organized crime to legitimate business.

During my 13 years in the Justice Department, I had the opportunity to be the legal advisor to the FBI and many other investigative agencies in various operations which have been known now as undercover operations.

I was the principal field attorney, acting as advisor to the FBI, during the so-called Abscam investigation, which ran from 1978 until February 2, 1980. I was the chief prosecutor in the case involving Congressman Myers, the case involving Congressman Thompson and Congressman Murphy, in the case involving Congressman Lederer, and in the case involving Senator Harrison Williams.

I do not have a prepared statement, Mr. Chairman. I have seen statements such as the one presented to the committee by Acting Administrator Mullen, who worked closely on the Abscam investigation, and I subscribe to what is in that statement as a reflection of what existed during the Abscam case. A statement was submitted to the Edwards committee by Irv Nathan, a former official of the Justice Department, which discusses certain issues that have come up in connection with Abscam; I think that statement is a very accurate representation of the [5] Government's position on those various issues.

We have submitted over the last couple of years probably thousands of pages of documents to various courts that have heard the Abscam cases, both on the trial level and the appellate level. I would be glad to submit those to the committee, if you are interested. Those briefs and legal papers we have submitted, along with the decisions that emanated, I think cover every issue that I am aware of that this committee has been looking into or may desire to look into.

Before I conclude this brief opening statement, I should say in the Abscam investigation—as I think I have outlined before in other places—I headed up a strike force office, had attorneys in the office that worked with the FBI, as I did, during the Abscam case. As situations came up where steps had to be taken and authorizations had to be obtained, we rendered our legal advice to the FBI, and the matter went up the line within the Bureau, up to the Director of the FBI, who granted approval in most situations.

I would be pleased to answer any questions that anyone may have about Abscam, or any other undercover operation, if that is of interest.

Senator MATHIAS. Thank you very much, Mr. Puccio.

Mr. Neal?

Mr. NEAL. Before finishing up with Mr. Good, Mr. Puccio, let me say to you that we have, for at least 3 long days, [6] been hearing testimony on the existing guidelines and safeguards, those safeguards that existed during Abscam, the way the FBI interprets those guidelines and safeguards in headquarters, and we have been taking testimony on the actual operation and decisionmaking process and flow of information with respect to the actual applications of these guidelines and safeguards. And in respect to these safeguards, it has been testified that there are approximately four safeguards. "Once, we only initiate investigations"—and I am quoting now from Mr. Heymann——

Mr. PUCCIO. From Mr. who, I am sorry?

Mr. NEAL. Mr. Phil Heymann. "We only initiate investigations, and we only use the undercover technique, when we reasonably suspect that a criminal activity of a given type or pattern is occurring or likely to occur." The same guideline, but stated a different way: "We impose on ourselves the requirement that there be a well-founded suspicion of criminal activity in a sector or area before commencing an undercover operation."

That is said to be the first guideline or safeguard. The second one is stated to be that, "Most important is the second major safeguard followed in every undercover operation of making clear and unambiguous to all concerned the illegal nature of any opportunity used as a decoy"—that is, clear and unambiguous the illegality of any situation.

[7] "An important third safeguard," stated by Mr. Heymann, "in undercover operations is our modeling of the enterprise on the real world as closely as we can." Stated a different way, Mr. Heymann says that, "A safeguard is that the inducement will be realistic or real life."

And finally, he says that in an undercover operation of the type of Abscam, that it is a safeguard that, "The middlemen we use, the unwitting middlemen, who do not know they are dealing with undercover operatives, would not bring in innocent people. The middlemen do not want to lose face or relationship with the undercover agents."

So the fourth safeguard, according to Mr. Heymann, is the self-interest of the middlemen in bringing in only the corrupt and not the innocent.

Our questions to you today will revolve around the interpretation of those guidelines and how they are actually applied in practice. But before we do that, let me finish up with Mr. Good, who was here for a long day Thursday, by going to the middlemen.

Mr. Good, it is a fact, is it not, that the middlemen, Errichetti, Criden, and some of the others, would receive portions of the bribes themselves. That is, they bring in Congressman *x*, Congressman *x*, if he accepted a bribe of $50,000, these middlemen would then go out and split that with him, would they not?

[8] Mr. Good. That is correct.

Mr. Neal. And in the case of Congressman Myers, Congressman Myers allegedly was paid $50,000, and Congressman Myers actually ended up with $15,000?

Mr. Good. I believe that is correct, yes.

Mr. Neal. And Mr. Errichetti, the middleman, ended up with $15,000——

Mr. Good. I am not, you know, totally familiar with all the breakdown, but if you have it based on testimony, I will accept your representation.

Mr. Neal. All right. And Mr. Criden ended up with $9,000, and then with Mr. Lederer, who got $50,000, he actually ended up with only $5,000.

Mr. Good. That is correct.

Mr. Neal. And Mr. Errichetti again got $20,000?

Mr. Good. If that is what the testimony reflected, yes.

Mr. Neal. And then, with Congressman Thompson, $50,000, he got $20,000; Mr. Errichetti got $10,000; Mr. Silvestri, $3,500, and so on?

Mr. Good. If that is what the testimony reflects, I will accept it.

Mr. Neal. You are aware that these people were splitting this up?

Mr. Good. Yes, I am.

Mr. Neal. Now, there came a time that not only that, but [9] there came a time when in this operation, you started paying at least one middleman, irrespective of—or, paying him directly—not letting him go out and have to depend upon the bribee, but to pay him directly; isn't that true?

Mr. Good. I think that arrangement was made in connection with the cases in Philadelphia, when they were aware that the operation was going to be terminating within a very, very few days.

Mr. Neal. Isn't it a fact that with respect to corrupt middleman Criden, he was paid $5,000 merely for bringing in Congressman Murtha?

Mr. Good. I do not recall the specifics of that. I know he was paid $5,000 right around that time. Whether or not it was specifically for bringing somebody in, or whether it was for—he was complaining that he had a lot of expenses and things of that nature in arranging for these meetings. The exact reason for that payment, I am not totally versed on at the moment, but he was paid, I believe, $5,000 right at the very, very tail-end of the operation when we knew it was coming down quickly.

Mr. NEAL. Now, he had heretofore shared with these bribees the bribe money after they left the undercover operative's presence; you are aware of that?

Mr. GOOD. Yes, I am.

Mr. NEAL. All right. Isn't it a fact that on January [10] 10, 1980 he was paid $5,000—paid by the undercover operatives directly—merely for producing Congressman Murtha?

Mr. GOOD. I do not think it was exclusively just for producing Congressman Murtha. It was that, plus other reasons. He was complaining that he had undergone a lot of expenses and whatnot.

Mr. NEAL. That was the date of the meeting with Congressman Murtha, was it not?

Mr. GOOD. I believe it was.

Mr. NEAL. All right. Mr. Puccio, isn't it a fact that he was paid $5,000 merely for producing Congressman Murtha?

Mr. PUCCIO. I would have to review the tape, and it is all on tape. My recollection is that Criden was very, very disappointed that Murtha had not taken the money at that meeting—because he was obviously going to get a share of it—and complained that he had tremedous expenses.

Senator MATHIAS. Did you say it is all on tape?

Mr. PUCCIO. Yes.

Senator MATHIAS. I was not sure.

Mr. PUCCIO. Yes, it is all on tape, and if you want, I will go into it further. But there is a tape that covers this entire point, and we can submit a copy to you.

Mr. NEAL. Oh, yes. We have a copy. And are you saying you are not aware of the fact that on the date that Congressman Murtha appeared, as a result of Criden's complaining, he was [11] paid $5,000 simply for bringing in Congressman Murtha to the meeting?

Mr. PUCCIO. I might quibble with you about "simply". He was paid $5,000, and part of it was because of his complaint that Murtha had not accepted any money, and therefore, he went to a lot of expense—he stayed at the Hyatt Regency and did a lot of other things, and did not get the money for it.

Mr. NEAL. Let me modify it, then. Isn't it a fact that as——

Mr. PUCCIO. Part of the reason was? Yes, I would say sure.

Mr. NEAL. All right. So part of the reason, at least—part of, then, the $5,000 to Mr. Criden at this point in Abscam, part of it was simply for producing a man before the cameras, who in fact did not take a bribe?

Mr. PUCCIO. Are you talking to me?

Mr. NEAL. Yes, sir.

Mr. PUCCIO. Part of it.

Mr. NEAL. All right. In fact, at that same time, wasn't there——

Mr. PUCCIO. I might just add that you are distorting the impact of what happened by phrasing it in that way. You have to see the videotape, which you say you have access to, to really see what happened. That is the complete record of what happened on that day concerning that $5,000, and we can go [12] back and forth characterizing it forever, and it is not going to change what is on the tape.

Mr. NEAL. OK. Let us put it this way, because I do not want to distort it. In respect to Congressman Murtha coming in and not taking a bribe, Mr. Criden, the middleman, complained, and as a result of that, and at that time, he was paid $5,000, at least in part because Mr. Murtha had come in?

Mr. PUCCIO. I do not think I can add anything to what I have already said.

Mr. NEAL. All right. Isn't it a fact, then—and I will ask either one of you—isn't it a fact that at the same time, there was—and there is a tape on this—there was an agreement made that thereafter, Mr. Criden would be paid directly by the undercover operatives for those people he brought in?

Mr. GOOD. I believe that that was an arrangement that was made down in Philadelphia.

Mr. NEAL. You were Mr. Amoroso's superior in this operation, were you not, Mr. Good?

Mr. GOOD. That is correct.

Mr. NEAL. Isn't it a fact that on a tape on January 10, 1980, in a conversation between Mr. Criden and Tony DeVito—that was Amoroso, posing as Tony DeVito——

Mr. GOOD. That is correct.

Mr. NEAL. Isn't it a fact that on that tape, it was determined that from that point on, Mr. Criden would receive [13] a certain amount of money, or would receive money directly from the operatives?

Mr. GOOD. If that is what the conversation reflects, I will accept it. But I think that what you have to understand is at this particular time, the decision had already been made to terminate the operation, and what we were doing was just satisfying Criden's complaints to keep him in our grasp, so to speak, until such time as we terminated the operation.

On January 10, the decision had already been made to terminate this operation at the end of the month, and what we wanted to do was just keep him on the string and have him available until we closed down the operation because he was one of the main targets that we wanted to interview at the conclusion of the covert stages. So all of this was done in that regard.

Mr. NEAL. All right.

I cannot read all of this, but let me read a few lines here, or one or two, and then I will ask the chairman for permission to make this transcript, which is a public transcript, part of the record.

The statement is made:

> You get *x* amount for bringing in the guy.
> All right. OK.
> And I don't have to depend upon him to take care o' me.
> OK. If you would o' said that in the beginning * * *
> [14] CRIDEN. OK. But * * *
> DEVITO. * * * I would o' known.
> CRIDEN. * * * no, but doesn't that make sense?
> DEVITO. You got it. I'm not * * *
> CRIDEN. OK.
> DEVITO. I'm not arguing with you.

Mr. Chairman, could I have permission to make this transcript, which is a public record of a transcript of a conversation on January 10, 1980, at the townhouse in Washington, D.C., a part of the record?

Senator MATHIAS. Is there objection?

[No response.]

Senator **Mathias**. Without objection, so ordered.

[The following was received for the record.]

Exhibit 13

Date: January 10, 1980.
Time: 2:26 P.M.
Place: 4404 "W" Street, N.W., Washington, D.C.
Participants: John Murphy (JM), Howard Criden (HC), Tony De Vito (TD), Inaudible (IA).

TD: To Miami. When are you going back to Miami?
HC: I'm goin' tomorrow.
TD: Okay. I gotta go up to New York and then I'll be back down there and I'll give you a call . . . and I got some more for you.
HC: Okay.
TD: All right.
HC: Okay.
TD: Uh, I just, what I'll do is before you leave I wanna take him and just talk to him for a few minutes.
HC: You gotta understand again. He's in the deal, okay? He just don't want nobody. He's not gonna come out and, he's not gonna have any stock in his name, just like you don't no stock in your name.
TD: Oh hey . . .
HC: We had this meeting at twelve o'clock this morning.
TD: Yeah.
HC: Okay? I mean in his, in his office. And we straightened out our problems, okay?
TD: Um-hm.
HC: In between, between the three of us. And he's agreed he's gonna let me hold, whatever has to be done for him, okay?
TD: Yeah.
HC: He's in the deal, okay, and he's gonna watch us like a baby okay? And you wouldn't get the deal without him because he and the fuckin' Governor are like this and the deal is bein' made through him, okay?
TD: All right.
HC: There's gonna be no bidding, no nothin' okay. And it's a fuckin' steal.
TD: All right. Well, you know, see, I would like us, I'd like to get together again with him because, and, and rightly so, the first time I met 'im, you know, out at the uh . . .
HC: The airport.
TD: The airport.
HC: Right.
TD: All right, uh, you know, he was bein' evasive, he was being cute.
HC: He was a little nervous.
TD: All right, well.
HC: All right.
TD: He's, you know but, now that he's seen me again he's, he's become relaxed and I'll tell you the truth, after I saw that article in the papers the day after . . .
TD: Yeah.
TD: About 'im, you know, it knocked the shit out of 'im.
HC: You got nervous.
TD: No, I didn't get nervous.
HC: Oh.
TD: I was, I was surprised he even showed up.
HC: He's got brass balls, this guy.
TD: You know, I'm surprised he showed up.
HC: He, he ain't afraid o' nothing'.
TD: Oh.
HC: Except that. Okay, he can't, he's—after all he's in charge of the Maritime in the Congress of the United States—he can't have any fuckin' ownership in a maritime company.
TD: Oh, I know that, I know that.
HC: If he does, he's up the fuckin' creek without a paddle.
TD: I know that. All I, but you understand, all I, uh, I have to tell them, which is true, that he's gonna get uh, uh . . .
HC: You don't have to tell 'im, he's gonna tell, you're gonna tell them he's our guardian angel.

TD: Yeah.

HC: He's gonna watch over us, he's gonna protect us and after all, Larry is his man.

TD: Um-hm.

HC: Okay, Larry is the former, he's the consultant to the Committee.

TD: All right.

HC: Okay. No more, he's off the payroll now, but he's his guy. And man, and he'll take 'im and he'll show 'im anything he wants to. I mean he ain't afraid to take 'im around. He just don't want anybody to know that he's got any stock in this situation or he's gonna have an interest.

TD: Oh I, no, no, I know that, but what I'm, I'm tellin' you is I'm gonna, I'm gonna tell my guy okay?

HC: Yeah.

TD: That he's, you know, he's bein' taken care of. He's, his, his interest is being hidden.

HC: I see. His interest is gonna be hidden.

TD: Yeah.

HC: Yeah, in other words . . .

TD: Because they understand that.

HC: If you have somebody that you're gonna put on the payroll . . .

TD: All right.

HC: Okay, if you got some . . .

TD: That was dumb, Angelo, no.

HC: Oh, listen, you gotta tell him . . .

TD: Yeah.

HC: To keep quiet. You can't tell Angelo anything.

TD: No, no, Angelo don't know anything about this.

HC: Okay.

TD: He's got nothin' to do with it.

HC: You can't tell him about this, okay?

TD: I don't tell Angelo anything. Hey, after what happened I can't, I can't trust Angelo to, uh, to that extent, all right? I mean the guy—well, bygones are bygones but this is, this is somethin' else. Angelo'll have, uh, no part o' that. But like I say, I gave you the five thousand now.

HC: Okay.

TD: I, you got more comin'.

HC: Okay.

TD: And then you're gonna have your . . .

HC: Okay.

TD: Your end o' this thing.

HC: All right.

TD: I just, I'll grab him after, I'll just talk to him for a few minutes.

HC: Okay. Okay.

(Interruption in Audio and Video)

HC: I don't have to account to anybody for this, okay?

TD: No.

HC: I mean, you know, he, he, he may say somethin' to Ange or somethin' like that.

TD: No.

HC: So, (IA)

TD: It's, it's, it's between us.

HC: Okay.

TD: And then when, uh, when I give you the other stuff it'll still be between us, okay?

HC: Okay.

TD: Now, I might meet you with Mel some time and, you know . . .

HC: Okay.

TD: And then we'll just step off to the side.

HC: Now, lemme tell you somethin' else about the whole thing, the program. I'll tell you what I think we have to do. See, in order for me to get taken care of, I gotta depend upon them.

TD: Okay.

HC: I would rather not, okay?

TD: All right.

HC: I would rather work a deal with you that when I deliver the guy to you, you're gonna take care o' me as if I made the contract with you. I'll deliver a guy, you're gonna pay me. You pay this guy, he's, he's, otherwise, if he picks up the envelope . . .

TD: All right.

HC: I dunno, like, suppose he says to me, nice . . .

TD: Well, okay.

HC: What am I gonna do?

TD: All right we can work it that. . .

HC: Doesn't that make sense?

TD: We can work it that way. We—that's uh, it's okay with me. No lemme ask you somethin'.

HC: Yeah.

TD: Uh, he doesn't look upset or anything—what happened uh, when you back, went back with, uh, with Murtha and you, and you talked to uh . . .

HC: I told, uh, Thompson what happened okay?

TD: Yeah.

HC: And he was a little upset. But he recognized the fact that he was gun-shy, Murtha, so Thompson's all right.

TD: Okay.

HC: As far as I'm concerned. This guy's all right. He said look, whatever you do is okay with me. I don't even wanna get involved, okay.

TD: Okay.

HC: He would prefer that he never knew Murtha and that he didn't even know each, that each other were involved in this situation. Everything is cool, okay?

TD: Okay.

HC: And I think Murtha will be okay once if we do somethin' with Murtha, okay, like put some money in a bank account, take an interest in that coal mine situation. But I don't wanna be in a position that I was in the other day. I deliver a guy, now I gotta depend upon him to take care o' me and Thompson.

TD: Okay.

HC: So that means I gotta get the package and take care o' him.

TD: All right.

HC: He's nervous because he don't know whether I'm gonna sh-stiff him or not. What I would rather do with you is to work out a deal with you, you say you deliver me the guy, I give the guy the envelope.

TD: And then I . . .

HC: You get X amount for bringing the guy.

TD: All right. Okay.

HC: And I don't have to depend upon him to take care o' me.

TD: Okay. If you would o' said that in the beginning . . .

HC: Okay. But . . .

TD: I would o' known.

HC: No, but doesn't that make sense?

TD: You got it. I'm not . . .

HC: Okay.

TD: I'm not arguin' with you.

HC: But . . .

TD: I just wanted to make sure that—and it looks to me now if he wasn't upset that we . . .

HC: No, no. No, no, he's not upset.

TD: We didn't give 'im the money because he was supposed to get ten and the other guy was supposed to get ten and, and I didn't, uh.

HC: Well, lemme, lemme tell you somethin', lemme tell you somethin'. This guy's interested in the big stuff.

TD: I know.

HC: He ain't interested in t-ten—it's nice to have because it helps in walkin' around money—but he's interested in this fuckin' big deal. If you can put these two shipping deals together, you'll never have to work a fuckin' day in your life for the rest o' your life.

TD: All right.

HC: Believe me, you'll never worry another fuckin' day. Because the way we do these two deals is to make this company public in a year or two okay, and make enough fuckin' money in cash and still have control o' the company. (IA) Put you on easy street.

(Telephone Rings)

TD: Excuse me. (On Telephone) Hello. Tony here. Yeah John. Uh, the, the way we had originally decided, uh, you know, to get 'em out. Yeah. Yeah and he, he sent over the, uh, the papers and . . .

(Interruption in Audio and Video)

TD: I think that this thing is gonna come off within two to three months about the, uh, the sheik, you know, comin' here.

JM: All right.

TD: Okay? And, uh, I'm being very honest with you, uh, I think of the people I'm involved with, uh, when we, when we talked with Thompson, he sent us, you know, to you and Murtha was here the other night, well, you know, we discussed things with him. But it seems to me that if I have to put my eggs on one guy to be the, the, the prime mover, from my evaluation of everybody, okay, I'm, I'm puttin' my money on you. So, you know, what I'm getting at here is that I think we, you know, this deal is gonna be very important with the shipping lines. The other deal'll come down. 'Cause I think we'll, we'll have it—between the two deals, between the first one and the second one—we'll have 'im come in. And I think, I think you can name whatever you want as far as this is concerned. Well I mean, not, I mean your end of this thing is gonna be . . .

JM: Yeah.

TD: It's gonna be taken care of by Larry.

JM: I, I'm not gonna be involved in it other than to, uh, let some people that are friends to the United States, good people.

TD: Okay.

JM: Know what, what I think, uh, is, uh, a judgmental decision. And I think this is the best . . .

TD: Um-hm.

JM: You possibly could do. When the sheik comes in . . .

TD: Yeah.

JM: Let 'im meet with me.

TD: Okay.

JM: Let me bring in one one o' my friends at the same time.

TD: Um-hm.

JM: Okay?

TD: Okay.

JM: And, and, and he'll get all the confidence he needs.

TD: Okay, well what I'm getting at is though, if, if it comes down to a point, uh, where some kind of legislation has to be introduced or, uh, or whatever has to be done to, you know, it will be done because this whole thing is gonna, is gonna hinge, you know, on that bein' taken care of that way, if you.

JM: Yeah, I don't, I don't think there's any legislative question or problem.

TD: Okay.

JM: We don't have to, it's all of the law, all of the opportunity is there at this time.

TD: Um-hm.

JM: See? Nothing has to be done really.

TD: Excuse me.

JM: The problem is recognizing that this is the opportunity under present conditions and to move.

TD: Um-hm.

JM: That's the best possible circumstance.

TD: Okay.

JM: Times, times will change within a year.

TD: Yeah.

JM: See? And I, I would say this situation may not exist in a year.

TD: Well, I don't know.

JM: (IA)

TD: You, you, you have, uh, see you have more of a, an insight into it because you're dealing with a lot o' these problems on a daily basis, okay? I only have what I'm told by him, okay, by these two guy, as to what-what their moves are, and they, you know, they see what's, what's happening there. So he's you know, he's talkin' about it, okay. Yassir, uh, uh, Kambir, uh, he's talkin' about within sixty to ninety days, all right, I think comin' over here you know, permanently. I wanna push the deal through on the Puerto Rico thing first.

JM: Right.

TD: So, if I can get that through him first okay, then he's comin' over, then we go for the second deal.

JM: Second, second, sure.

TD: Okay?

JM: Sure.

TD: This'll put him right in the middle of, of both deals, you know, with us.

JM: Right.

TD: Okay? But, like I say, I don't like to slight anybody, okay? If, if, but this is important to all of us and, you know, talking with Thompson, talking with Murtha, evaluating from my own position—okay, I'm not, I'm not tryin' to boost your ego.

JM: No, I understand.

TD: Okay? But in evaluating people—that's what you do all the time—in evaluating people, I have to figure that I would rather have you as the prime mover in, you know, in the whole thing 'cause these fellas they, the two o'them know you. I think whatever you say with them—uh-uh, here again, okay, this is just—just a, my evaluation, Okay?

JM: Well, uh-huh.

TD: I think they will support any kind of a—a move that you make, okay? And I'm, I apologize for what happened here the other night when, you know, when Murtha come over. Uh he, I dunno, he—he seemed, he got very upset about somethin'. I dunno what Howard, you know, had told him.

JM: I dunno, I think, uh, I think we have an atmosphere in this country today where, uh, anyone in public office or out of public office probably doesn't understand or is, uh, upset abut the liabilities of any conversation they might have.

TD: Hey——

JM: There's the problem.

TD: I—I understand that. I, you know, and, uh, that was fine, you know, uh, but I guess, you know, Howard had meant—made a couple of comments, uh, okay, concerning, uh, division of the money and I said, I says well, I says that, you know, that's not, I don't care, you know, what you, what you do or how——

JM: That's Howard, I dunno.

TD: You know——

JM: It's whatever Howard wants to do, Howard does.

TD: I, well that's what I, you know——

JM: Right?

TD: That's what I had said, but what happened was your name came up, okay? And, uh, Thompson's name came up and, you know, and—and naturally then Murtha brought it up. So I says well, I says, you know, as far as I'm concerned, I says I don't care, you know, what you do. I says, you know, I'm—I'm here talkin' to you. So, uh-uh, then Howard interceded and, uh, you know, he—he's—do you, do you know, uh, I mean I might be sayin' somethin' I shouldn't be sayin' to you—did—did you know what transpired here?

JM: No, but I—I imagine that, you see, any—any time money's mentioned where a public official is mentioned, there—there's automatically an ability to link 'em to something illegal or to taking a consideration for something, uh, that he's supposed to do or use his office to do and there's, no public official would ever be involved in anything like that.

TD: Well.

JM: Particularly Thompson, myself, or Murtha. We'd never do anything like that. See?

TD: Well.

JM: So there's the, uh, there's the problem. And.

TD: (Laugh) I, you're—you're play—, you're being coy with me, I, you know, I'm——

JM: Well I'm—I'm just tellin' you the, uh, the—the mentality of—of anyone in that position today, see?

TD: Well hey, I understand, uh-uh, what, uh, you know, what you're sayin' as far as being careful and being cautious, all right?

JM: Sure.

TD: It's, uh, and to be honest with you, the day I first met you, okay, when we were at the, uh, that airport hotel there——

JM: Sure.

TD: Uh-uh, I—I was reluctant to give you the money because you—you were, you were very——

JM: You didn't, you didn't give me any money.

TD: Well, okay, when——

JM: I never, I never received any money from anyone.

TD: Okay when, uh, I gave it to——

JM: And—and then——

TD: I gave it to Howard.

JM: And would not accept anything.

TD: Okay.

JM: From you or from Howard.

TD: Okay. But what I'm sayin' to you is, okay, after seein' what was in the papers the next day, okay, I'm surprised you even came to meet us the day before.

JM: Listen——

TD: Okay? I——

JM: If I have to, if I have to control my life by what some newspaper writer writes, or by what some people want to, uh, throw around, uh, it just, it—it would negate what my life's ambition is, which is to be an effective public official.

TD: Hey.

JM: And I'm not gonna, hey, I'm not gonna let a bunch of little jerks in the newspaper industry or a little bunch of gum-shoes——

TD: Um-hm.

JM: That are in what I call the Justice Mafia that are out to, uh, that are out to feather their own nests——

TD: Yeah.

JM: And—and work hand-in-hand illegally with, uh, with certain people in the press industry, they're not gonna intimidate me from doin' what I wanna do in life.

TD: Well you—you know, you have to make that decision——

JM: Sure.

TD: And being in the, in a, in an office that you're in you know, you, like you said, you either face the wind, with the wind to your back, or you're gonna turn around, you know, and look right into it if, uh, if, you know, it, the time comes that you figure that's what you have to do.

JM: Right.

TD: Okay?

JM: Right.

TD: And I guess there are a lot o'people that turn, put their back and face the other way, 'cause it's-it's easier, it's easier that way. No but, like I said, when, you know, well I think we oughta just let it go because——

JM: Yeah I think, I think we'd better.

TD: Uh-uh, because, uh-um-uh, I—I just didn't want to, uh, alienate, uh, Murtha. I thought that you might have been after they came back and talked to you, but in our general conversation today I felt that, you know, you——

JM: No, I mean I understand.

TD: I—I—it, it didn't, it didn't bother you, okay?

JM: Right. No. No.

TD: But, uh, I think this thing will, uh, will, everybody'll be well satisfied when—when this thing is over 'cause I think this—this shah is gonna be——

JM: I know——

TD: Uh shah——

JM: I think it's——

TD: The sheik is, you know, is, when he, when he comes will be stuck, not stuck, but he'll be in between the two deals, and I think it'll be, uh, to our best advantage, you know.

JM: I think it'd be the best advantage if, uh, of the countries, frankly.

TD: Well, I think what, if—if, if you don't mind, what I'll do is I'll have him, when he can, and it in uh, in the near future, come in to meet you. This will you know, and then you can show 'im around, you can bring that interpreter, your—your friend along and I—I think that'll be very impressive for him, okay?

JM: He'll like this guy.

TD: Well I'm sure he will.

JM: Same——

TD: I'm sure, I'm sure he will. I think that, you know, that——

JM: Is the, is the sheik a Moslem?

TD: Yes.

JM: My guy's not a Moslem. He's a, uh, he's a—a Bahai.

TD: A Bahai.

JM: A Bahai.

TD: I'm not.

JM: A Bahai is one o'the minority religions in Iran and through the Middle East. They're, uh, they're through all the Arab areas and the Bahais have been kind o'picked on by the, uh, particularly the Shiite Mo-Moslems. I think your man's probably a Sunni Moslem.

TD: Uh you, now you got me, I don't know, I—I don't, I don't get involved in.

JM: These are the different sects——

TD: Yeah.

JM: That, uh, that are very important in those areas.

TD: But I will, I—I—to me it doesn't, uh, matter, I think he will, meeting you and then having the interpreter there, uh, with you who's a personal friend, you know, on top of being there to—to extend the courtesy——

JM: Sure.

TD: I think that'll go over super. I think that'll, uh, cement things very well. You know, he likes to uh, like everybody else, be treated with his, uh, due respect.

JM: Hey——

TD: Uh——

JM: Everybody does.

TD: You know, uh, and so that--that type of treatment I think will go over very well with him. Okay?

JM: Sure.

TD: All right.

JM: Tony.

TD: So.

JM: Okay.

[15] Mr. NEAL. Now, after January 10, there were others who came in, public officials, and who took bribes, and Mr. Criden, then, was paid directly by the undercover agents for bringing those in, rather than having him going out and sharing the bribes; isn't that correct?

Mr. GOOD. Are you referring to the Philadelphia situation, now?

Mr. NEAL. I am referring to Johanson, I am referring to Schwartz, Jannotti.

Mr. GOOD. I believe that is correct, but I do not totally recall all the specifics of those events at this moment.

Mr. NEAL. Now, there, then, are several examples of these middlemen being paid directly for bringing somebody in who would then accept the bribe, and the undercover agent would pay the guy for bringing them in. Do you consider that an appropriate operation, Mr. Good?

Mr. GOOD. I do not see any problems with it, no.

Mr. NEAL. Mr. Weinberg himself was paid a bonus based, at least in part, on bringing people in who took a bribe, was he not?

Mr. GOOD. In the early stages of the operation, that was the case, yes.

Mr. NEAL. He was paid $5,000 in part for bringing in Mr. Errichetti who took a bribe, was he not?

Mr. GOOD. That is correct.

[16] Mr. NEAL. He was paid $15,000 in part for bringing in Mr. MacDonald, who took a bribe?

Mr. GOOD. That is correct.

Mr. NEAL. Part of his bonuses in these respects—in part, now—was for allegedly recovering forged certificates of deposit from Mr. Errichetti, wasn't it?

Mr. GOOD. Would you repeat that?

Mr. NEAL. Part of these bonuses we talked about—we said the bonuses of $5,000 for Mr. Errichetti was in part for Mr. Errichetti. The $15,000 bonus was in part for bringing in Mr. MacDonald.

Mr. GOOD. That is correct.

Mr. NEAL. All right. Another part of the reason for getting these bonuses was recovering, allegedly recovering, forged certificates of deposit from Mr. Errichetti, wasn't it?

Mr. GOOD. No. That was never part of any bonus payment.

Mr. **NEAL**. Let me ask you if you do not have a file in you possession that reflects that that is in part the reason for one of the bonuses.

Mr. **GOOD**. No. I believe that the file—I have only reviewed it very quickly myself, recently—but it included certificates of deposit, references to certificates of deposit involving Rosenberg, not Errichetti.

Mr. **NEAL**. Do you have the document there?

Mr. **GOOD**. Yes, I do.

[17] Mr. **NEAL**. Would you check it? Look at the one in reference to the $5,000 bonus in part for Mr. Errichetti, April 9, 1979.

Mr. **GOOD** [perusing documents]. I do not see any references to CD's we recovered from Errichetti in this at all. I will give it to Bob to doublecheck it for me, but I do not see any reference at all in there.

Mr. **NEAL**. All right. A part of the $15,000 bonus, part of it was for bringing in Mr. MacDonald, part of that was for allegedly recovering forged CD's, certificates of deposit, from Mr. Rosenberg, was it not?

Mr. **GOOD**. That was a consideration, but that was in connection with a communication that came from our Miami office. To put this in its proper perspective, the New York office sent in a request for a $15,000 lump-sum payment, which spelled out the reasons why we felt it was justified. Headquarters, then, since Weinberg at this time was cooperating both with the New York and Miami offices, asked the Miami office to submit a communication stating the efforts that he had expended in behalf of the Miami division, and in connection with that communication, Miami did include a reference to certificates of deposit that Rosenberg had provided to the Miami office. But that was just as a backup to the New York request.

Mr. **NEAL**. For the $15,000 for MacDonald?

[18] Mr. **GOOD**. That is correct.

Mr. **NEAL**. All right. Mr. Good, isn't it a fact that Mr. Weinberg actually helped Mr. Errichetti prepare the forged—back to Mr. Errichetti, now—helped Mr. Errichetti prepare the forged CD's and then recovered them from him?

Mr. **GOOD**. Weinberg provided a blank sample CD to Errichetti so that he could utilize it in preparing the fraudulent ones, yes.

Mr. **NEAL**. And then, Mr. Weinberg then recovered those that Mr. Errichetti had provided.

Mr. **GOOD**. The ones that were printed up, I think, were actually turned over to agent Amoroso.

Mr. **NEAL**. All right. Now, isn't it a fact that the same thing occurred with the Rosenberg CD's? Isn't it a fact that Mr. Weinberg helped Mr. Rosenberg prepare forged CD's and then "recovered" those CD's from Mr. Rosenberg?

Mr. **GOOD**. No, I do not believe that that was the same situation, no.

Mr. **NEAL**. Mr. Good, have you ever looked at tapes or transcripts of conversations between Mr. Weinberg and Mr. Rosenberg on October 25, 1978, October 26, 1978, and October 30, 1978?

Mr. **GOOD**. I do not know at this point whether I have or not. I would have to review them to see if I did.

Mr. NEAL. All right. It is hard for us in this hearing [19] to read all of the transcripts, and it is hard to be fair and not read them all; you understand that. Let me suggest to you, Mr. Good, and ask you to check this, let me suggest you look at those three, and you tell me if in those three conversations, it is not fairly clear that Mr. Weinberg and Mr. Rosenberg are getting together to prepare forged CD's, and that these prepared forged CD's are the ones that Mr. Weinberg later "recovered" from Mr. Rosenberg, and that these CD's are in that Miami teletype, supporting a bonus.

Mr. GOOD. I think I can explain to you my understanding of what happened between Weinberg and Rosenberg. It was being utilized as a tool to ingratiate ourselves with these people, these CD's. We made one case in October 1978, where we recovered $200 million worth of fraudulent CD's and made four arrests. After this, and after having discussions with prosecutors and other people involved in the case, we came to the determination that the fraudulent CD's was not a terrifically viable prosecutable case. So at that time, I instructed Weinberg—I instructed him myself to this effect—that we did not want to continue to recover certificates of deposit for the sake of recovering them, that it was a questionable situation, but in order to enhance our credibility with the people we were dealing with, he could continue to use that as a vehicle, but he was not to be considering this as an accomplishment where he was going to be getting bonuses as a [20] result of these recoveries, and we had no intentions to be utilizing this as a prosecutable situation.

So it was with that understanding that he began to deal with Rosenberg and others. It was the same situation with Errichetti when we utilized that. It was a stall tactic and an enhancing of our credibility. So——

Mr. NEAL. So the recovery of these——

Mr. GOOD. There is one point that I would like to make in connection with the Rosenberg one. When Mr. Rosenberg came in here to Washington and was cooperating with the U.S. Attorney's office here, he alleged that Mel Weinberg had actually provided blank CD's to him to go out and have them made up. The U.S. Attorney's office followed this out to its conclusion, and they actually identified a man, whose name escapes me right now, from New York, who they had down here, and they interviewed him, and he admitted having furnished the blank CD's to Rosenberg. This man had absolutely no connection with Weinberg or anything else. So I think it was pretty well nailed down that in the Rosenberg situation, Mel did not furnish them blank CD's. I think the man's name was Sakarov, and he was actually interviewed by the assistant U.S. Attorneys down here and provided a statement to that effect.

Mr. NEAL. Well, I am not quite sure where we stand. Are you saying with respect to the Errichetti CD's, the so-called [21] recovery of the Errichetti forged CD's, that was simply a ploy to continue the cover?

Mr. GOOD. That is correct. We were using that as a stall tactic, again. We had promised financing for casinos and whatnot. We used this as a stall tactic. It was done with our knowledge. We knew that he was giving him the blank, and we knew that this was a part of the scenario he was using. We were telling the mayor that the sheik had a lot of money in Mideast banks, and in order to get the money out of the banks, we had to put certificates of deposit in place of the money over there, and that is how we got the money out. And it was used as a delaying tactic, as well as a tactic to enhance our credibility that we would be capable of becoming involved in illegal activities with them.

Mr. NEAL. Did you tell the Miami FBI that this was with your cooperation?

Mr. GOOD. About Errichetti?

Mr. NEAL. Yes, sir.

Mr. GOOD. Miami had nothing to do with it at that time.

Mr. NEAL. Well, you are aware of something called the "Askeland 302", which reports that Mr. Weinberg has recovered $435 million in forged securities from Mr. Errichetti, aren't you?

Mr. GOOD. From Errichetti?

Mr. NEAL. Yes.

[22] Mr. GOOD. No, I am not aware of that.

Mr. NEAL. You are not aware of that?

Mr. GOOD. No. I did not think that Askeland had anything to do with Errichetti at all.

Mr. NEAL. Are you saying, then, that with respect to the recovery of the Rosenberg CD's, that was a legitmate illegitimate transaction?

Mr. GOOD. I am afraid I do not quite follow you.

Mr. NEAL. Well, that Mr. Weinberg was actually recovering those rather than helping Mr. Rosenberg make them up.

Mr. GOOD. To the best of my knowledge, he had been dealing with Rosenberg in connection with soliciting CD's and so forth. But it was done as an entree to Rosenberg, rather than looking toward that as a prosecutable case as far as New York was concerned.

Mr. NEAL. I understand that. But isn't it a fact that Mr. Weinberg helped Mr. Rosenberg prepare forged CD's and then recovered them, as reflected in these transcripts I have given you—October 25, 1978, October 26, 1978, October 30, 1978?

Mr. GOOD. Twenty-five, twenty-six and thirty?

Mr. NEAL. Seventy-eight. Conversation between Mr. Weinberg and Mr. Rosenberg.

Mr. GOOD. I would have to review those tapes. I am not familiar with that time.

Mr. NEAL. Would you review those?

[23] Mr. GOOD. Yes.

Mr. NEAL. All right. I want to you to review those and see, and correct me if I am wrong—and we will give you an opportunity—to see if it is not a fact that Mr. Weinberg is helping Mr. Rosenberg make up those forged CD's; then, later on, those very CD's are alluded to or cited in a memorandum from Miami, supporting a bonus for Mr. Weinberg. The latter part is clearly true, isn't it?

Mr. GOOD. Yes, but it was only a very small reason for that bonus, and it was not included in New York's request at all.

Mr. NEAL. But these Rosenberg CD's were included as a reason for supporting this bonus to Mr. Weinberg?

Mr. GOOD. Yes, to a very minor degree.

Mr. NEAL. All right. Then, if these conversations I have referred you to, reflect that Mr. Weinberg was helping Mr. Rosenberg make up these CD's, that would be a surprise to you.

Mr. GOOD. That is something that I do not really go along with at all. He may have been suggesting things to him as to how to go about it, but we know where those blank CD's came from, and they did not come from Mel Weinberg.

Mr. NEAL. Mr. Good, I have looked into your man, Shaffron, and I believe it is correct that the Shaffron you are talking about as furnishing documents furnished letters of credit, not CD's. We are talking about CD's. But you look at [24] these conversations, and then you come back and you tell me if I am wrong.

Now, let me go on to the bonus for a minute for Mr. Weinberg. The thing that bothers me here is that, quite clearly, quite clearly, there was a correlation between lump-sum bonuses paid——

Mr. GOOD. I am sorry. I was distracted for a minute, Mr. Neal.

Mr. NEAL. I said, it is true, as we have discussed, that there was a correlation between lump sum bonuses paid Mr. Weinberg and bringing people in who you were successful in getting to take a bribe; isn't that correct?

Mr. GOOD. That is correct, but I think I should explain the situation. When this case started off, nobody really expected it to develop in the manner that it did. And the usual procedure for paying people by the Bureau is based on a COD basis. That is the way we deal with informants. We do not put somebody on a monthly salary whose performance is unknown, that we do not know what to predict.

Mr. NEAL. So you do not buy a pig in a poke?

Mr. GOOD. That is right. So, exactly the situation here. This was a small little operation out in Long Island that a lot of people did not really blink an eye at when we started it, and Weinberg, we did not know what he was going to do, how much he was going to involve, how much time. So that [25] was the understanding at that time. As things produced, he would get paid. When we saw the thing developing, then, we said, "Wow, this thing looks like it is going to take off. We are going to change it with Mel. We are going to put him on a monthly salary as opposed."—And that is what happened after that $15,000 bonus that was paid. It was the understanding that was going to be the last bonus, and no matter what happened from there on and henceforth, he was going to get a monthly salary and no consideration what we did.

Mr. NEAL. Of course, he was paid $50,000 recently, wasn't he?

Mr. GOOD. Yes, he was.

Mr. NEAL. And he may get another bonus?

Mr. GOOD. It might be considered, yes.

Mr. NEAL. OK. So that $50,000 was only this year, wasn't it?

Mr. GOOD. That is correct.

Mr. NEAL. Now, let me go ahead. That part was a preface to my question. It is quite clear, then, that at least at some stage in the investigation, and specifically with Errichetti and MacDonald, there was a direct correlation between the payment of a bonus and the success in getting these people to take a bribe?

Mr. Good. I would not put it in exactly those words, "the success in getting those people to take a bribe," but [26] in the overall accomplishment of the case to that point.

Mr. Neal. All right. The success of the case to that point?

Mr. Good. That is correct.

Mr. Neal. A correlation between the lump-sum bonus and the success of the case to that point?

Mr. Good. And the efforts and work and time that he had expended in that connection.

Mr. Neal. Mr. Good, you are aware that—whether it is accurate or not, and I think I have expressed to you my doubts about the accuracy of it—but you are aware that defense counsel were claiming in these cases that Mr. Weinberg was getting a bounty or a bonus for bringing these people in and that that was a motive for getting them to play-act before the camera; you are aware of that allegation?

Mr. Good. I am aware of that defense allegation, yes.

Mr. Neal. Then, with all the knowledge you had, Mr. Good, when you testified one time, you and Mr. Puccio, on July 8 or 9, 1980, in a pretrial, due process hearing before Judge Fullam, you were asked to specify lump sums to Mr. Weinberg , and you left out the $15,000 Weinberg bonus for bringing in Mr. MacDonald. Why was that?

Mr. Good. When I testified at that hearing, I was totally unprepared. I got off the plane and got on the stand. I had absolutely no idea what I was going to be questioned [27] about. I had no opportunity to review the appropriate documents to testify from. There were some documents presented to me then that I agreed were correct, when they actually were not fully correct. And that was the situation there. I was not testifying totally accurately, because I did not have an opportunity to review the necessary documents.

Mr. Neal. And that was later corrected?

Mr. Good. That is correct.

Mr. Neal. It was corrected very shortly after that, wasn't it?

Mr. Good. I do not recall exactly when it was corrected.

Mr. Neal. Now, that was on—by the way, that was on July 8 or 9, 1980, and I guess I had better ask Mr. Puccio this question. A month and a half later, Mr. Puccio was testifying and was asked this question, and gave this answer:

The Court: "Did his"—referring to Mr. Weinberg's—"compensation depend upon the success or lack of success of the investigation?"

Answer: "To my knowledge, no."

Mr. Puccio. You have confused me a little bit by saying a month and a half after July 8, I testified. I do not think that could be.

Mr. Neal. I am sorry. You testified on July 8. I beg your pardon.

[28] Mr. Puccio. Are you talking about in Philadelphia, before Judge Fullam?

Mr. Neal. Yes.

Mr. Puccio. Yes.

Mr. Neal. And you testified on July 8, and you were asked that question and gave that answer. Were you confused at that time, Mr. Puccio?

Mr. Puccio. Wait. Let's step back a moment. That is not the complete answer I gave, OK? I said during that testimony to Judge Fullam that I viewed it as likely that the FBI would pay more money to a productive informant than a nonproductive informant. And I offered to supply a list of the payments, and that subsequently was supplied.

I, too, was called for a hearing. I was on vacation. I flew in there. And to the extent I know anything about the subject, I supplied Judge Fullam with what I thought was complete information at the time, to be supplemented by a list, which was delivered to him.

Mr. Neal. But at that time, were you asked that question, and did you give that answer?

Mr. Puccio. That is not the complete answer.

Mr. Neal. Well, did you testify at that time that in fact, there was a direct correlation between the bonus and the success?

Mr. Puccio. No, no, no, no. I do not think there was. I [29] did not testify that way then, and I am not testifying that way now. I think, however, in a successful operation, the FBI is more likely to pay money to an informant than an unsuccessful one, and I base that on commonsense, not on anything else.

Mr. Neal. Then, your answer is that you did not so testify?

Mr. Puccio. To that question and answer?

Mr. Neal. Yes.

Mr. Puccio. You are taking it out of context. If it is in the record, I said it.

Mr. Neal. Well, it is in the record. And my question was, were you aware at that time when you testified that in fact, Mr. Weinberg was paid $5,000 at least in part, for bringing in Mr. Errichetti, as has been testified to here today, and $15,000 at least in part for bringing in Mr. MacDonald.

Mr. Puccio. The only way I can answer that question is, at the time I testified, I had not read any of the backup memoranda which triggered these payments. I knew that Weinberg was being paid from time to time sums of money. I did not have any clear picture of what—every time the FBI paid Weinberg, I did not ask for the "backup paper", as it is called, to see what the stated reason for the payment was. I suspected that it was being done in accordance with ordinary procedures, which is, when you want to make a payment to an informant, just [30] like when I might want to give a raise to an attorney, you review the record over the last 3 or 4 months, you write a memo, and you send it down.

Mr. Neal. Were you aware, at the time you said there was no correlation between payments and success or lack of success in an investigation, that the defense counsel were arguing that he was getting a bonus for bringing in these people?

Mr. Puccio. The proposition was that if he brought in Myers, he got a certain amount of money, if he brought in Lederer, he got a certain amount of money, all on down the line. I disagreed with that proposition then, and I disagree with it now. It was not done that way. Obviously, as the investigation became more and more successful, I would assume that he was paid more and more money, and I think the records bear that out.

What I was objecting to was this automatic, almost mechanical type thing—you bring in a head, and you get $10,000. That just did not occur.

Mr. NEAL. Well, that pretty much occurred when he brought in Mr. Errichetti and Mr. Rosenberg.

Mr. PUCCIO. I would not view it that way. I think what you are doing is you are taking paperwork that the Bureau prepared in the ordinary course and reading too much into it. In order to give an informant a payment, you record what he has done—and John can answer this better than I can—over a [31] period of time, and that is what was done here, to my knowledge.

Mr. NEAL. Isn't it clear, Mr. Puccio, that near the end, Mr. Criden got a bonus for bringing in people, paid directly by the undercover agents?

Now, this is not a Weinberg; this is a middleman.

Mr. PUCCIO. OK. Calling it a "bonus"—I might agree with you on that. And I might just add, I agree with what John has already said about that. The shutdown of the operation had already been decided upon; Criden was getting very, very troublesome——

Mr. NEAL. Well, that does not help Mr. Jannotti or Mr. Schwartz.

Mr. PUCCIO. What's that?

Mr. NEAL. That does not help Mr. Jannotti or Schwartz, if somebody decided——

Mr. PUCCIO. I was not aware that they needed any help.

Mr. NEAL. My question was, was he being paid a bonus for bringing in people—Mr. Criden.

Mr. PUCCIO. I think I would call it a commission.

Mr. NEAL. A commission, OK. Now, then, you said——

Mr. GOOD. I think there is one other thing that I should point out in connection with those early bonuses. Weinberg was only getting $1,000 a month at that time. That included all his expenses, and he had to live off of that and support his family. So he was getting the real barebones, as far as [32] living money is concerned, and that was his only means of livelihood at the time.

Mr. NEAL. Well, now, we have heretofore decided that he has gotten $250,000 in a little over a 3-year period.

Mr. GOOD. Yes, but at that early stage, for those first 6 months, he was getting $1,000 a month, which included in New York both his expenses and his salary.

Mr. NEAL. But you had also arranged for him not to spend 3 years in prison, but to get probation?

Mr. GOOD. That is correct.

Mr. NEAL. Now, then, Mr. Puccio, I ask you, while we are on this bonus thing, on July 8, you testified that—and I am quoting again:

> Witness: I believe he was receiving a set fee.
>
> When you say 'set fee', a weekly or monthly salary, or a lump sum for the whole investigation.
>
> Question: Was he getting a monthly check, a regular check, or stated amount, Mr. Puccio?
>
> Answer: I cannot give you specifics.
>
> Question: Did his compensation depend upon the success or lack of success of the investigation?
>
> Answer: To my knowledge, no.

Now, that was on July 8.

Mr. PUCCIO. That is right. But I also said to Judge Fullam during that same testimony that it seemed to me that the FBI was going to pay a productive informant more than an [33] unproductive one. I thought it was sort of obvious, but I thought I did say it.

Mr. NEAL. And that was in response to the defense's contention that he was getting a bonus for bringing these people in and getting them to play-act. Whether that was right or wrong, that was the contention they were making.

Mr. PUCCIO. Do you mean like an actors' equity fee—in other words, a certain amount of money to put on a play—was that their argument at the time?

Mr. NEAL. Wasn't that their argument? Wasn't their argument——

Mr. PUCCIO. I will tell you something, Mr. Neal. They did not think of that argument until they got into the Myers trial, and even during the Myers trial, they had not quite articulated it, but thought it out until the very end.

Mr. NEAL. Wasn't this argument being made when you gave those responses?

Mr. PUCCIO. No, no.

Mr. NEAL. It was not?

Mr. PUCCIO. No.

Mr. NEAL. All right.

Mr. PUCCIO. I was totally surprised that any U.S. Congressman would testify that he put on an act for $50,000 in front of the representatives of an Arab sheik. That came as a complete shock to me.

[34] Mr. NEAL. You understand that this is July 8 and 9, 1980?

Mr. PUCCIO. Yes.

Mr. NEAL. All right. A month and a half later, there was a trial of Myers before Judge Pratt in New York. Are you aware of that?

Mr. PUCCIO. Yes. I tried the case for the Government.

Mr. NEAL. You tried the case. And let me spin out this scenario, now. At that time, you had given—the Government had given—Judge Pratt certain voluminous materials in camera.

Mr. PUCCIO. Concerning what?

Mr. NEAL. Concerning the Abscam operation.

Mr. PUCCIO. Specifically?

Mr. NEAL. Specifically—I cannot——

Mr. PUCCIO. Do you mean, just generally, we gave them——

Mr. NEAL. Volumes of material.

Mr. PUCCIO. In general terms, we gave them a lot of material.

Mr. NEAL. All right.

Mr. PUCCIO. A particular document, I would have to review——

Mr. NEAL. And Judge Pratt reviewed that material?

Mr. PUCCIO. Right.

Mr. NEAL. And then, defense counsel got to the point of what was the $15,000 payment to Weinberg for. Do you remember [35] that?

Mr. PUCCIO. Do I specifically remember? I know it is covered in the briefs, and it was a point argued on this before Judge Pratt. He wrote a lengthy portion of his opinion on this aspect of it.

Mr. NEAL. Do you remember that?

Mr. PUCCIO. Somewhat, yes.

Mr. NEAL. All right. And do you remember Judge Pratt getting confused and saying that this $15,000 bonus to Mr. Weinberg was on a matter for which he risked his life, and it would be dangerous for defense counsel to go into that, and defense counsel pulled off?

Mr. PUCCIO. Yes, I remember that.

Mr. NEAL. And you were standing there, listening to that?

Mr. PUCCIO. Uh-huh.

Mr. NEAL. In fact, he was confused. The $15,000 payment, as the Government has now acknowledged in its brief, was the $15,000 payment principally for bringing in MacDonald.

Mr. PUCCIO. Well, there was a payment, and then there was backup paperwork, describing what the application was about, and there is a confusing set of documents, which I read a long, long time ago. Now, I will take your word for it. In other words, you are saying that that payment was made exclusively for the MacDonald. I do not think that is true.

Mr. NEAL. Mr. Puccio, I am saying that there is a document [36] in the files of the Department of Justice that says, "We recommend a bonus being paid to Mr. Weinberg of $15,000 for bringing in Mr. MacDonald."

Mr. PUCCIO. Right.

Mr. NEAL. All right.

Mr. PUCCIO. I do not think it says just that, by the way. If you will give me a moment, I might find out what it says.

Mr. NEAL. Well, Mr. Good has got it. It is a May 14, 1979 document. And then there follows that a Miami document that says, "Yes, we think you ought to do that, and he has recovered all of these CD's."

Mr. PUCCIO. Well, OK. There are documents, and they say what they say, and I do not have them in front of me, so I really cannot——

Mr. NEAL. My question was Judge Pratt was confused about the payment, the motive for that payment of $15,000, wasn't he?

Mr. PUCCIO. He may have been, he may have been.

Mr. NEAL. The Government has now acknowledged in its brief that he was confused, hasn't it?

Mr. PUCCIO. I think on a certain aspect of it, he was, but I cannot be sure; I do not know out of personal knowledge.

Mr. NEAL. But you stood there and heard Judge Pratt be confused, and did you correct him? That is my question.

Mr. PUCCIO. We have been through all of this several [37] times. It has been testified to. If you want, I will go through the whole thing. And it is a point that was made by defense counsel at the trial, it was heard by the Judge, and it was rejected. It is in our briefs, it is in their briefs, it is in the Judge's decision. If you like, I will go through it for you.

Mr. NEAL. Mr. Puccio, did you stand there, allow Judge Pratt to make this mistake, and not correct it, knowingly?

Mr. PUCCIO. I will explain to you what happened, if this point is of interest to you.

Mr. NEAL. All right, please. It is.

Mr. PUCCIO. Judge Pratt had just reviewed the file, the classification 137 file, which is the FBI informant classification, concerning Weinberg. I had reviewed that file perhaps a year before. And when Judge Pratt corrected defense counsel or whoever he corrected, about what was in that file, I did not dispute him, because I assumed he knew what he was talking about, OK?

Mr. NEAL. So the answer is, then, you did not recollect the true facts, and therefore, you did not correct it.

Mr. PUCCIO. Right.

Mr. NEAL. All right.

Mr. PUCCIO. And I would ask you. in turn, what the significance of that episode is.

Mr. NEAL. Have you read Senate Resolution 350?

[38] Mr. PUCCIO. I do not know. Does that mean I cannot ask any questions? OK. I will withdraw the question.

Mr. NEAL. Since you are arguing with me, if you will look at paragraph——

Mr. PUCCIO. I stand corrected. It says I cannot ask any questions, and I will at least withdraw that one.

Mr. NEAL. If you will look at section 3, subparagraph 9, you will see why I am asking the question whether a prosecutor deliberately allowed a judge to make a mistake in respect to a matter that was being raised and not correct him.

Mr. PUCCIO. Well, I obviously did not do it deliberately.

Mr. NEAL. Now, I accept your proposition that you were not refreshed on the facts at that time, and that is it.

Mr. PUCCIO. All right. OK, fine.

Mr. NEAL. Now, Mr. Good, there has been an allegation that Mr. Errichetti gave a number of gifts to Mr. Weinberg. Mr. Weinberg——

Mr. GOOD. I do not think Errichetti made the allegation.

Mr. NEAL. I said there was an allegation that Mr. Errichetti gave a number of gifts to Mr. Weinberg. You are aware of the allegation?

Mr. GOOD. Yes, I am.

Mr. NEAL. Among those gifts were a microwave oven, three Sony television sets, and a video-cassette recorder.

Mr. GOOD. Right.

[39] Mr. NEAL. You are aware that Mr. Weinberg under oath denied that?

Mr. GOOD. I am.

Mr. NEAL. You are aware that those items were found in Marie Weinberg's home?

Mr. GOOD. There were items of a similar nature.

Mr. NEAL. There were three Sony television sets and a microwave oven, and a cassette recorder found in her home.

Mr. GOOD. And the cassette recorder was a totally different make and brand than the one that was allegedly given to him.

Mr. NEAL. Let us take the Sony television sets and the microwave oven, then. You are aware that items fitting that generic description were found in Marie Weinberg's home?

Mr. GOOD. Yes, I am.

Mr. NEAL. All right. And you are aware that the serial numbers were removed from those?

Mr. GOOD. I was advised of that, yes.

Mr. **Neal.** All right. And you were aware that Mr. Weinberg, when questioned by the FBI on that, said he did not know where those items came from?

Mr. **Good.** That is correct.

Mr. **Neal.** You are aware that the FBI conducted an investigation with respect to those?

Mr. **Good.** Yes, I am.

[40] Mr. **Neal.** A Mr. Houlihan. And you are aware that the investigation supports the proposition that Mr. DiLorenzo in fact bought those items?

Mr. **Good.** I am not aware of that, no.

Mr. **Neal.** You are not aware of that?

Mr. **Good.** No, I am not.

Mr. **Neal.** Mr. Good, at one time, you testified that you saw one of those items, at least, in Mr. Weinberg's home.

Mr. **Good.** One of the items that Marie Weinberg has referred to?

Mr. **Neal.** Let me read your testimony, and this is on February 4, 1981:

> Now, did there come a time when you asked Mr. Weinberg if he could provide documentation for a microwave item that he had?
>
> **Answer.** Yes, I did.
>
> **Question.** When did you learn that he had a microwave oven?
>
> **Answer.** I think I became aware of it sometime last spring.

Now, you are testifying on February 4, 1981:

> **Question.** Under what circumstances did you learn about the microwave oven?
>
> **Answer.** I was in his residence, and I noticed one there.
>
> [41] **Question.** Did you question Mr. Weinberg about it?
>
> **Answer.** No, I did not.
>
> **Question.** When did you—did you ever mention to Mr. Puccio that Mr. Weinberg had a microwave oven in his residence?
>
> **Answer.** At the time the allegations surfaced, I believe I mentioned to Mr. Puccio that I observed a microwave oven. I am not certain.

Mr. **Good.** That is correct.

Mr. **Neal.** All right. On February 22, 1982, a year later, you gave an affidavit, and in that affidavit, you said as follows:

> I first met Melvin Weinberg in the spring of 1978, when we began to formulate plans for the Abscam operation. From that time until the summer of 1979, when Mr. Weinberg and his family moved to Florida, I was in his home in Central Islip, Long Island, on two occasions, each for no more than a few minutes. After Mr. Weinberg moved to Florida, I was in his home at Tequesta, Fla., on one occasion for about 5 minutes. Since, at the time of my visits to the Weinberg homes, I had not heard any allegations concerning Mr. Weinberg's receipt of gifts, I had no reason to take notice of what was in his house. I do not recall seeing any Sony Trinitron television sets, a Betamax video recording system, a stereo system, or a microwave oven.

Mr. **Good.** That is correct.

[42] Mr. **Neal.** That appears to be an inconsistency there.

Mr. **Good.** Yes, it does.

Mr. **Neal.** Would you explain it?

Mr. **Good.** By referring to the homes, I was referring to his home in Central Islip and in Tequesta, where Marie is domiciled. The home that I was referring to when I indicated that I had seen the microwave oven was in a temporary quarters that he was residing—he was actually in a trailer—and this is where I saw the microwave. It was a J. C. Penney microwave, and he subsequently provided receipts for it. But it was not in connection with the items that allegedly were in Marie Weinberg's home, either in Islip or in Florida.

Mr. NEAL. So you are referring to different homes?

Mr. GOOD. That is correct.

Mr. NEAL. Mr. Good, I have asked you about this, and you have suggested that this might be something you would want to explain, and that is the allegations of financial dealings between Mr. Weinberg and agents.

Mr. GOOD. That is correct.

Mr. NEAL. Would you go ahead and explain that for the members of the committee?

Mr. GOOD. I think that something has to be understood in the dealings with Weinberg in a situation such as this. Here is a man who has been a criminal all his life and then has decided to cooperate with the Government, go into an undercover [43] operation, and put himself in a position where he is going to be exposed as an FBI informant and as a man who has cooperated with the Government. He is going to testify. At one point, he is going to reach a situation where he is going to have to sever all of his past relationships, everybody that he has known for 50-some-odd years of his life, and he is going to be relying on one group of people for support, and that is going to be the agents that have been working with him for the past 2 to 3 years. He cannot go to his friends, he cannot go to his neighbors. In Weinberg's situation, he made the decision he was not going to take the witness protection program because he had no confidence in it. So he decided he was going to move himself. So, who did he look to for some support and some assistance, but the agents that were immediately surrounding him, who had been living with him, virtually, for the past 2 years. When he was moving, that is what prompted the agents to assist him in this manner. Nobody benefited one penny financially from any of this. It was merely assisting somebody who was looking upon the agents who were working close to him as a friend, to help him get moved, and that was what prompted that whole situation.

I think what you have to keep in mind, in this case, who is the most vulnerable individual from the standpoint of the Government's case; who can the defense attorneys attack? They lost the case on the facts in courts. There is every good [44] reason to believe they are going to lose it on the law right to the Supreme Court. What can they do? They have got to attack Mel Weinberg, and they have got to attack the agents that worked with him, and that is exactly what these people are doing.

Mr. NEAL. Mr. Puccio, do you want to add anything to that?

Mr. PUCCIO. I agree with what John has just said, obviously.

Mr. NEAL. I guess one other thing, and that is two areas, but one big heading, the termination of Abscam, Mr. Good. What are the criteria used to decide to terminate one of these operations? You have moved in this case at least over three different districts—New Jersey, Philadelphia, New York. What are the considerations that go into deciding when to terminate an undercover operation? What are the standards for termination?

Mr. GOOD. Well, I think it is always on people's minds who are involved in the operation both actively in the field and back here at headquarters. An undercover operation can end like this sometimes, by an operative getting exposed. So you always are alert for problems that may arise. But as we go down the line, as the operation is extended month to month, every 6 months, or whatever the case might be, everybody is always looking for a termination point. You have to be aware of the pressures that the undercover agents and the operatives are under. It is very fatiguing. It is mentally taxing. It is [45] traumatic, at times. So the Bureau is well aware of this, and they watch this very carefully for mental and physical fatigue on the part of the operatives. I do not think an undercover operation from the standpoint of the operatives should run more than 18 months. It is too demanding on the people that are involved. So that is what I put on it, in the back of my mind, that an operation should not go more than 18 months. This went more than 18 months, and it was getting to the point where everybody was really beat. So this was one consideration, in my mind, the most major consideration.

The second consideration was the fact that we had been dealing with these people. How long can our credibility hold up? We had been promising to deliver, and we had not been. We had run out of credibility with some people before we terminated it. These were the two primary, I think, considerations in bringing the operation down. Then there were all sorts of other, minor considerations that were considered. We at one time set October 1 as a takedown, and we extended it. Then finally, it was given a firm date by a consideration by the Bureau, by the Department, by talking with the operatives in the field, that February was it, and we were going to close it down then.

Mr. NEAL. One consideration, then, is simply the exhaustion of the agent?

Mr. GOOD. That is correct.

[46] Mr. NEAL. Another consideration is the wearing out of the scenario, I guess you would say, the credibility.

Mr. GOOD. That is correct.

Mr. NEAL. Are there considerations that maybe it is costing too much, in whatever terms you put cost?

Mr. GOOD. I do not think that this operation, from the standpoint of the cost itself, was a very expensive operation. When you consider the accomplishments as opposed to what we might have spent, had we done an overt operation, and what it would have cost for a 2-year investigation in a normal matter, the cost actually was, I think, very reasonable. So I do not think that was a factor that was considered.

Mr. NEAL. Let us take, if not dollar cost, was it a consideration that as you went along, the middlemen were promising that a lot of people would take bribes, and as you moved on, a lot of those people either would not take the bribes, in four or five cases where meetings were actually held, or in some eight cases where the middleman says these people would come in and take bribes, the middleman could not arrange the meeting; was that a consideration?

Mr. GOOD. I do not think that was a serious one. It may have been considered by some people. It was not by me.

Mr. NEAL. All right. Now, I do not know how much you, Mr. Good, can answer that question, and maybe Mr. Puccio is freer, since he is out of the Government, to do it. But [47] according to documents in the files of the Department of Justice, the FBI learned of this Meltzer's criminal activity sometime in August or September 1979. And I take that to mean that they learned he was using the Abscam scenario to scam victims out in the West.

Mr. GOOD. Mr. Neal, because of the pending litigation, the FBI has been instructed by the Department to refrain from making any comments on this area.

Mr. NEAL. Mr. Puccio, let me ask you this question, then, in talking about the cost of an undercover operation. Are you aware that the file in the Department of Justice apparently reflects that the FBI learned of Mr. Meltzer's criminal activity in August or September 1979? When I say "criminal activity", I mean using the Abdul Enterprise scenario to scam victims out on the west coast.

Mr. PUCCIO. Perhaps I can answer this question by saying I was not aware of the existence of Meltzer until I read the article in the New York Times, which was after the Abscam operation had surfaced, and I understand that now there has been some backtracking done in the files to find out the facts on the Meltzer problem, so to speak, and to decide how to deal with such an occurrence in the future. My only answer to that kind of thing would be very hypothetical. If I knew about it at the time, during Abscam, that there was some possible property loss in, I have been told, the neighborhood [48] of $50,000, $60,000, that conceivably could have been incurred by people on the west coast. If I were faced with that during the operation, and someone came to me and said this is happening, and in order to prevent this property loss—a relatively small property loss—from happening, that it would be necessary to abort the Abscam operation which at the time was heavily involved in various political corruption areas, official corruption areas, I would have said—though I do not speak for the Government here—that we cannot do that, and when the operation is terminated, if there has been some property loss, the Government should make good on that property loss if the Government was at fault. But that is hypothetically speaking. It never really surfaced during the operation.

Mr. NEAL. It never surfaced to you?

Mr. PUCCIO. No.

Mr. NEAL. All right. So what you are saying, hypothetically, at least, is that if something like that had occurred during the course of the Abscam undercover operation where you learned that a person was out on the west coast using the scenario, using the Chase Manhattan Bank help, and causing people economic losses by virtue of that, you would, depending on the dollar amount, I suppose, have said, "Well, let's don't stop him now, because that would expose the Abscam undercover operation, and on a cost benefit analysis, I make the judgment to go forward and take care of these people later on."

[49] Mr. PUCCIO. That is right. You, of course, realize that the final judgment would not be mine in that situation. That is the

way I would probably call it, depending on how active Abscam was at the time. I think you reach a different dimension, if I could just add parenthetically, when you are talking about a possible bodily injury, or in certain undercover operations, the possibility of somebody being killed; it is a different sphere entirely, as you might well guess.

Mr. NEAL. Mr. Chairman, that is all I have of Mr. Good. I am going to start back earlier on with Mr. Puccio.

Senator MATHIAS. I have only one question of Mr. Good. In response to a question from Mr. Neal on the subject of the CD's, Mr. Good, you said—as nearly as I can remember—that in the Rosenberg situation, Mel did not furnish blank CD's.

Mr. GOOD. That is correct.

Senator MATHIAS. Did he furnish them in any other situation?

Mr. GOOD. Yes. He did furnish one blank to Errichetti as a sample, which Errichetti utilized to have others printed up. That was done with our knowledge. And I found the passage here, Senator, that might answer Mr. Neal's question.

This is referring to Shaffron. "Shaffron advised that Rosenberg had contacted him in an effort to obtain CD's on the Merchants and Shipowners Bank." He is referring to CD's, if [50] this is correct here, which I believe it is.

Senator MATHIAS. And you are not aware now that Weinberg furnished CD blanks at any other time?

Mr. GOOD. No, I am not.

Senator MATHIAS. And you think that as far as you know now, there was one case in which he furnished a blank to Errichetti, and he did that with your knowledge?

Mr. GOOD. That is correct.

Senator MATHIAS. Senator Inouye.

Senator INOUYE. No questions, Mr. Chairman.

Senator MATHIAS. Senator Rudman.

Senator RUDMAN. I believe I only have one other question for Mr. Good. At the end of the hearing on Thursday, we were talking about the Silvestri matter. I want to ask you to recount once more, because there may be subsequent testimony, and so we have a very clear record on this, after Senator Pressler arrived with Mr. Silvestri, and it was quite obvious at that point that he had no idea as to why he was there, that he was a perfectly honest person there, under totally false information, will you please tell us once more what your admonishments were to Mr. Silvestri?

Mr. GOOD. I am glad you brought that up again, Senator, because I think my response was not completely clear when I said that we continued to do business with him. He was told very specifically—and there are, I believe even videotapes [51] of agent Amoroso telling him that, "Hey, we cannot put up with this; you are only supposed to bring us people who know why they are coming here, that they are going to take a bribe, that they are going to tell us what they are going to do in exchange for it, and we want people that you have done business with and known before." He was told that, and I believe there are tapes that spell it out specifically.

Senator RUDMAN. What was his response? I have not seen that tape. What was his response?

Mr. GOOD. I believe that he agreed that that would be what he would do in the future. I have not reviewed those tapes myself in quite some time, so I cannot be totally accurate as to what is on them. But he agreed that he would, and if he gave some explanation as to why he brought Pressler in—I do not believe there was—I do not recall it. But when we were continuing to do business with him, we never had any other bribe arrangements made, or he never brought anybody in to take a bribe or anything like that. We merely listened to them after that, and evaluated it and accepted it for what it was worth. But we had no more meetings arranged for people to come in to accept bribes or anything, with Silvestri, after the Pressler matter.

Senator RUDMAN. Why was that?

Mr. GOOD. Because we put the pressure on him that if he was bringing somebody in, we knew that he knew that he wasn't [52] going to try and do the same thing he did again—bring somebody in who was not aware of why he was coming and would not perform the necessary elements when he came in.

Senator RUDMAN. Do you recall if at that meeting, subsequent to Senator Pressler leaving, or at any other meetings shortly following that, whether specific questions were asked of Mr. Silvestri to ascertain the true facts of why he had brought someone there that he had not met until 10 minutes before he arrived there? I mean, was he subjected to that——

Mr. GOOD. I cannot recall at this time, Senator, what exactly he was asked at that time. I have not reviewed those tapes in quite some time.

Senator RUDMAN. I wonder if Mr. Puccio has reviewed any of that information, because that is one of the more celebrated failures of this investigation.

Have you reviewed, or does your recollection bring back any facts as to what was said to Silvestri—now, you were not here on Thursday, but I assume that now the Pressler matter is fairly clear in your mind.

Mr. PUCCIO. Yes. In fact, I reviewed the Pressler tape yesterday, again—I had not seen it in a while—in anticipation of answering any questions about it. But this particular question, what happened after the meeting, I have not reviewed any tapes. My recollection is that Amoroso sort of bawled Silvestri out on the telephone about the Pressler meeting, and [53] we have a tape of that. That is my recollection.

Senator RUDMAN. Does your recollection—since you reviewed some of it yesterday—in any way indicate that the FBI agent on the scene tried to ascertain what the circumstances were that caused Silvestri to bring this man in?

Mr. PUCCIO. During the meeting with the Senator?

Senator RUDMAN. Right.

Mr. PUCCIO. I think Silvestri said during that meeting—or, Senator Pressler said that Silvestri really did not know anything about him. How much probing was done there on that subject, I really do not think much was done at all, but that would not normally be what would occur. What the agent did was lay out the proposition, which the Senator rejected.

But I might point out, one thing caught my eye again in reviewing this thing yesterday. Agent Amoroso has a tremendous amount of undercover experience, and I think sort of had a feel for these things after a while. He immediately told Pressler, before Pressler mentioned himself, that he should—he gave him some time, in other words—"Maybe you ought to look into this," or "do some research", I think, is what he said. The agent raised that; probably because the Pressler thing had come up so quickly, it was a way of just putting the thing off for a little bit, and that is even before the—the Senator later said, "Well, I am going to do some research on it."

Senator RUDMAN. Mr. Puccio, in the whole approval chain [54] that we have learned of in the last 3 days of hearings, is my understanding correct that before that meeting could be arranged, even that short notice after it went to FBI Headquarters and was passed up through the channels there, did it not first have to be somehow cleared by you?

Mr. PUCCIO. Well, the normal procedure was followed. The concurrence would be sought from, or the advice of the principal field attorney would be sought, and it was in the Pressler matter. I was called and told that Silvestri was not bringing in X, whoever it was, but was bringing in Senator Pressler, and under the same conditions as previous meetings, and I said, "OK, go ahead with it."

Senator RUDMAN, And that is within a space of, what, less than an hour before he was brought in?

Mr. PUCCIO. I probably was called an hour, an hour and a half before he actually attended the meeting.

Senator RUDMAN, Did you at any time question agent Good or whomever you had spoken to, as to any basis for the Senator being brought in on that short notice?

Mr. PUCCIO. Uh-huh. At a later time subsequent to the meeting, we did review some of the tapes—there were a couple of lead-up tapes, and we discussed it. There was an unrecorded conversation, I believe. And it was clear that Silvestri was representing to the undercover people that here, he had another corrupt person who was going to take money. There was [55] no question that he made that representation. In light of that, I do not believe we had any choice at all but to have that meeting.

Senator RUDMAN, Well, that may be so under that guideline, and that is precisely what we are looking into, because I asked the question of, I think it was Mr. Wilson, who was our other witness, and I will ask you the same question—had you had prior successful experience with Silvestri?

Mr. PUCCIO. Yes, very definitely.

Senator RUDMAN, In how many cases?

Mr. PUCCIO. He produced one Congressman, Congressman Thompson, who took a substantial amount of money. He produced a State Senator from New Jersey. In both of those cases, the money was passed to an intermediary at that meeting.

Senator RUDMAN, In both of those cases, however, there was evidence that you had that indicated that Silvestri had some relationship with people who were colse to those individuals; am I correct on that?

Mr. Puccio. In the State senator situation, he was very close to the State senator himself. In the other situation, in the Thompson situation, through his wife's influence in politics in New Jersey, he was able to get entree to Congressman Thompson's office.

Senator Rudman. And you knew he had entree to Congressman Thompson?

[56] Mr. Puccio. Absolutely, Yes. That was on tape.

Senator Rudman. But there was no connection in this particular case?

Mr. Puccio. Yes, he had a connection here. He had his girlfriend—I guess I could describe her as such—a woman named Marilyn Bell, who drove them to the meeting, was a friend of Pressler's. I mean, there was a connection. It wasn't as if he just walked over here and——

Senator Rudman, Well, I think that characterization is probably incorrect, but it is neither here nor there.

Mr. Puccio. The "girlfriend" characterization?

Senator Rudman, Yes. Let me——

Mr. Puccio. Well, it was a mutual friend, let us call her.

Senator Rudman, It was a friend for 20 years previously that had been mentioned in the Washington Post story, just someone he was acquainted with.

Mr. Puccio. Well, I know we had the people interviewed, and there were 302's on those——

Senator Rudman, Let me ask you this, Mr. Puccio. I will ask you the same question I asked Mr. Wilson, and answer it, if you could, just directly. Knowing Silvestri's connections as they were in New Jersey, but knowing of no other connections with any other Member of the Congress and Senate, if you had received a call that actually was less than an hour before the [57] meeting took place, asking you to clear a meeting with the majority or minority leader of the U.S. Senate, who are people whose names are very well known and reputations well known, would that have given you any pause?

Mr. Puccio. Under these circumstances, no.

Senator Rudman. It would not have?

Mr. Puccio. No. And I do not think the fact that it was an hour is especially significant, Senator, because there is really not much you can do in an undercover operation to go out and verify these things. I mean, all I was able to do is open up the Congressional Directory and look up Senator Pressler, who had a very distinguished background. He was a Rhodes Scholar and a graduate of Harvard Law School. But you really cannot make those subjective judgments in this situation. It certainly would be—in effect, you are cutting off a lead, and you are creating more problems than you are solving, both to the investigation, legally, and to the Senator.

Senator Rudman. Well, we will get into that later, I am sure. That all depends on whether or not we completely agree with your guidelines which I, frankly, having run a number of undercover operations of my own, totally disagree with the amount of screening you did. But that is a matter of personal judgment, and your opinion is probably as good as mine.

Mr. Puccio. Right.

Senator Rudman. Let me ask you one last question. You [58] made several references, in response to Mr. Neal's questions, that of course, the FBI obviously paid informants a great deal more if they came forth with successful information than if they did not.

Mr. Puccio. Right. I think that is true.

Senator Rudman. Of course that is true. That is true in any police operation. Now, I just want to ask you this. You are not trying in any way, I hope, to say there is any similarity between classically what the FBI refers to as informants and what we have referred to in these hearings as corrupt middlemen. There is quite a difference, is there not?

Mr. Puccio. Yes. Corrupt middlemen—do you mean, like Criden or Errichetti or——

Senator Rudman. Yes, or Silvestri.

Mr. Puccio. Yes. Those people are unwitting participants in the operation.

Senator Rudman. But they are not informants in that sense.

Mr. Puccio. No, only in the sense that they give us information about corruption. But they are not people who obviously were working for the FBI directly.

Senator Rudman. With your vast experience in the prosecution in the Eastern District, informants that you dealt with and the Bureau dealt with would give you information as to where stolen property was located, who might have committed a [59] particular bank robbery, but they would not get into the play of the situation and move people in and out that might commit crimes; am I correct?

Mr. Puccio. They would, they would. In DEA, for instance, in the drug area, it is very common for informants to become involved in undercover drug operations. It depends how you define "informant". At one point, the Bureau, I think, used to define "informant" as someone who they would meet privately, he or she would give information, and no one would ever know about that person. That is, totally a secret. If you asked the DEA what an informant was, they would probably tell you something entirely different—someone who sets up a buy and who is obviously, in most cases, a witness to the transaction.

Senator Rudman. Classically, that is not the informant that the Bureau has been dealing with very successfully all these years.

Mr. Puccio. It depends which years you are talking about.

Senator Rudman. Well, I think the point is made. Thank you.

Senator Mathias. Senator Leahy?

Senator Leahy. I will pass, Mr. Chairman.

Senator Mathias. Before Mr. Neal addresses his questions to Mr. Puccio, let me read in part from a letter that I [60] have received, from Senator Pressler, which he has requested be put in the record.

He says:

> Last Thursday, July 22, an FBI official said that my name was not leaked and that I had "announced" that I had a meeting. This is not true. Indeed, I first learned of my involvement in the Abscam matter from Charles Babcock, the *Washington Post* reporter. He called my press secretary at his Washington home early Sunday morning, February 3, 1980 and said Senator Pressler was involved in Abscam and had attended a meeting, and had turned down a bribe. Babcock was told that I was attending the Tidewater Republican Conference at Easton, Md. Bab-

cock subsequently called two or three times and left messages for me there. The news reports I had heard indicated that the scandal involved Members of Congress accepting bribes being offered by bogus Arab sheiks. At that time, it did not occur to me that I had met with the same group since no one posed as a sheik to me. A staff member accompanying me at the Tidewater Conference called Babcock back in the early afternoon, at which time Babcock stated that he would use my name in his story whether I talked with him or not.

Is there any objection to the inclusion of Senator Pressler's letter, together with a copy of a letter from Mr. Babcock in the record?

[No response.]

[61] Senator MATHIAS. Without objection, so ordered.

[The following was received for the record:]

EXHIBIT 14

U.S. SENATE,
Washington, D.C., July 27, 1982.

Hon. CHARLES McC. MATHIAS,
Chairman, Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, Washington, D.C.

DEAR MR. CHAIRMAN: Since I do not plan to testify at the hearings your Committee is holding, I would like to have this letter read.

Last Thursday, July 22, 1982, a FBI official said that my name was not leaked and that I had "announced" that I had had a meeting. This is not true. Indeed, I first learned of my involvement in the Abscam matter from Charles Babcock, the *Washington Post* reporter. He called my press secretary at his Washington home early Sunday morning, February 3, 1980 and said Senator Pressler was involved in Abscam and had attended a meeting, and had turned down a bribe. Babcock was told that I was attending the Tidewater Republican Conference at Easton, Maryland. Babcock subsequently called two or three times and left messages for me there. The news reports I had heard indicated that the scandal involved Members of Congress accepting bribes being offered by bogus Arab sheiks. At that time it did not occur to me that I had met with the same group since no one posed as a sheik to me. A staff member accompanying me at the Tidewater Conference called Babcock back in the early afternoon, at which time Babcock stated that he would use my name in his story whether I talked with him or not. He said it would be a positive story on me since "sources" told him I had turned down a bribe. Later that afternoon I returned Babcock's call and had an interview. The *Washington Post* quoted "law enforcement sources" as the origin of the story on me.

Subsequently, the FBI has persisted in saying that my name had not been leaked and that I had "announced" the meeting myself. This caused me to write a letter to Babcock and he in turn sent me a response (copy attached) stating that he certainly would have mentioned my name and that I did not "announce" to the *Washington Post* that I had turned down a bribe offer.

Indeed, on that Sunday and Monday, we were flooded with calls from practically every major news service in the country including the *New York Times,* and *New York Post,* the *Washington Post,* the *Washington Star* and all of the networks.

In any event, this perhaps seems a minor point but I think what the FBI is saying is that the names of the innocent people did not get to the press. In my case the press knew about it before I did. I was upset to hear that an FBI official again said that I had "announced by meeting and let it be known." That is not true.

Thank you very much for your assistance in helping me clarify this matter.

Sincerely,

LARRY PRESSLER,
U.S. Senator.

Enclosure.

THE WASHINGTON POST,
Washington, D.C., February 6, 1981.

Senator LARRY PRESSLER,
Dirksen Senate Office Building,
Washington, D.C.

DEAR SENATOR PRESSLER: Forgive this tardy response to your Dec. 19, 1980 letter. I was out of the city over the holidays and then, frankly, misplaced it. I am happy to comply with your request to give you my recollection of the origins of the Washington Post story early last year that first identified you as having rejected the advances of the FBI undercover agents in Abscam.

Although I obviously can't reveal my sources, I got your name from persons familiar with the investigation and then I initiated the call to you. An aide told me you were at the Republican meeting in Easton, Md. and I called you there to ask about your run in with the FBI. Because I was busy writing the daily developments in the case, I asked a colleague, Martin Schram, to do the interview with you. I believe he did tape the call at your request, but I doubt seriously if the tape was ever transcribed or even in existence today.

I do not recall saying we would have "gone with the story" whether we talked to you or not, though I certainly would have mentioned your name in the context of the larger, daily story of the developing scandal. I can certainly say that you did not "announce" to The Washington Post that you had turned down a bribe offer. I called you, told you I had heard you were innocently drawn into the scheme and you then agreed to tell me your recollections of what happened.

I hope this letter, typos and all, will satisfy your request.

Sincerely,

CHARLES R. BABCOCK,
Staff Writer.

[62] Senator MATHIAS. Mr. Neal?

Mr. NEAL. Mr. Good—Mr. Puccio, I have to make this for the record one more time—Mr. Puccio stated that there was indicia of reliability of Mr. Silvestri because he produced Mr. Thompson. Let me ask you one more time—and because he brought in a State senator—let me ask you one more time for the record, what person does the FBI records reflect was responsible for bringing in Congressman Thompson?

Mr. GOOD. Directly responsible was Mr. Criden.

Mr. NEAL. Now, that takes care of Mr. Thompson. What, with respect to the other man referred to as a State senator—is it not correct that the Government decided that that case will not be prosecuted?

Mr. GOOD. I believe that to be correct, yes.

Mr. PUCCIO. Just to correct that first, I disagree with John. The FBI record, the best record, which is a tape, correctly reflects before the Pressler meeting—I made this point, Jim, in our private session—correctly reflects the fact that Silvestri produced Congressman Thompson and was responsible. And the FBI was armed with that knowledge on the day that Senator Pressler walked into the meeting. So there is a vast difference between that and what you just said, and I thought I would just bring it out.

I might also say on the Maressa point that there was a recommendation of prosecution in the Maressa case. Ultimately, [63] the case did not get prosecuted. I invite you to look at the videotape and make up your own mind as to whether or not Silvestri brought in a corrupt person on that occasion. That videotape, obviously, the agents were armed with on November 7, 1979, at the time the Pressler meeting was set up. I do not mean to quibble with you about this, but I do completely disagree with you.

Mr. NEAL. We disagree, I am sure, Mr. Puccio, on several things.

Let me go on with you, Mr. Puccio. Tell us now what the role of a person in your position from 1978 through February of 1980 is in respect to an undercover operation. You are Chief of the Organized Crime Strike Force in Brooklyn. Now, what do you have to do in an undercover operation?

Mr. PUCCIO. Well——

Mr. NEAL. Just speaking generally, now.

Mr. PUCCIO. Speaking generally—and I think the record will show that we had a number of such operations going on at the same time as Abscam, that we were involved in——

Mr. NEAL. Those operations being conducted by the FBI——

Mr. PUCCIO. And other agencies; mostly FBI, yes.

Mr. NEAL. All right. Now, what is the role of the strike force chief under those circumstances, speaking generally?

Mr. PUCCIO. The role of the strike force chief, [64] generally, is to supervise the attorneys and liaison people who are assigned to the strike force and coordinate and develop an organized crime program for that area of the country. In an undercover operation, since there does involve a certain amount of intrusion in an undercover operation, they are considered important steps that are taken, investigative steps. The FBI people, or whatever agency is involved, the personnel involved, would meet with the strike force chief before one of these was initiated and get an understanding that they would be working together with the strike force if the strike force was interested in the case, and get an understanding that we would provide legal assistance and advice, et cetera.

My role, then, would be to assign one or more people in the office to that case, and then from time to time, I would monitor the progress of an undercover case, either through my attorneys or through the agents directly, or through the supervisory people, such as John, in the Abscam case. I had known John for about 10 years at the time the undercover phase began, roughly 10 years, and John is a highly experienced FBI agent who had done a lot of work with informants and was very familiar with how to run one of these operations. And I would speak to John almost daily on other matters as well, so I had sort of two ways of knowing what was going on in this particular case.

[65] Mr. NEAL. Is it your responsibility—do you simply respond to questions for legal advice when the FBI comes to your office?

Mr. PUCCIO. Well, not exclusively that. I mean, we do that, of course. The attorneys in these undercover cases, because they are very unique in a sense, and can be very complicated, try to really establish a 50-50 partnership with the undercover people and the FBI people and work directly with them. I am sure that suggestions are made as to how to do things from time to time, and recommendations might be made as to what area to go into, what type of thing is important as opposed to unimportant. I am not just talking about Abscam. For instance, a prosecutor who gets involved in one of these cases ultimately, if it is a successful operation, is going to be involved in trying the cases or prosecuting the cases that come out of it. And we do have input; if we feel that the case is not worthy of Federal prosecution, that has a tremendous—although I do not know that we can order the closing of an undercover operation—that has a tremendous impact on what the FBI does.

There is no particular guidebook. Every operation is a little bit different, depending on who the people are, what kinds of crimes are involved.

Mr. NEAL. Well, let me go step by step, then. In your situation, or the situation in your office, do you have the [66] right to veto the institution of an undercover operation?

Mr. PUCCIO. No.

Mr. NEAL. Do you have the right to veto the selection of an undercover agent?

Mr. PUCCIO. No.

Mr. NEAL. Do you have the right to veto the selection of a Mel Weinberg as a cooperating witness, cooperating individual?

Mr. PUCCIO. No, not a technical right of veto, but you can imagine that if we said we were absolutely opposed to it and we think it is a horrible idea, practically speaking, it is not going to happen.

Mr. NEAL. That would depend upon the personal relationship between you and the agency to some extent, would it not?

Mr. PUCCIO. Yes, but it would also depend on the pragmatics of the situation. If we are not interested in prosecuting the case, where is the FBI going to go with it—go to another prosecutor and try to interest him or her in it? It is not likely.

Mr. NEAL. Do they come to you, as a practical matter, when they are taking particular steps in an undercover operation, such as offering a bribe to somebody?

Mr. PUCCIO. Yes, oh, yes.

Mr. NEAL. And you concur or not concur?

Mr. PUCCIO. Yes.

Mr. NEAL. If you did not concur, is there anything that [67] says what will happen?

Mr. PUCCIO. Theoretically, it can still occur, but I would doubt it.

Mr. NEAL. How often would the undercover operatives report to somebody in your office—or would that depend on the nature of their operation?

Mr. PUCCIO. The undercover operatives themselves?

Mr. NEAL. Or the supervisors.

Mr. PUCCIO. The supervisory people—there is also another person involved under the supervisor—John is a supervisor—there would be a case agent or agents involved. I would say very, very regularly, probably every day.

Mr. NEAL. Who would you report to?

Mr. PUCCIO. I would keep people in Washington apprised of an undercover operation, the people in the organized crime section of the Department——

Mr. NEAL. The organized crime section?

Mr. PUCCIO. Right.

Mr. NEAL. And how would you keep them advised? What would be the means or manner of communication?

Mr. PUCCIO. Depending on the operation, really. If it were a sort of a low-key type tying, I would periodically advise them. Something like Abscam, I would try and keep them pretty much up on what was going on—certainly, up on any payoff that was about to take place. And then periodically in [68] Abscam, I would go down to Washington and maybe prepare a little memo and give it to a few people and then sit around and talk about it, that kind of thing. There was no set format for doing that. But in a case such as Abscam, they were kept very well advised.

Mr. NEAL. When did you first hear of Abscam?

Mr. PUCCIO. April 1978.

Mr. NEAL. What was the proposal at that time?

Mr. Puccio. The proposal at that time was to set up an undercover operation using Abdul Enterprises as a front and to try and attract people dealing in stolen bonds, fraudulent certificates of deposit, securities, stolen art, et cetera.

Mr. Neal. Nothing to do with political corruption?

Mr. Puccio. Nothing to do with political corruption.

Mr. Neal. When did you first hear of Melvin Weinberg?

Mr. Puccio. On the first day I heard of Abscam. I was introduced—the case was discussed with me at the initial meeting—other than, perhaps, a phone conversation that John and I might have had before the case agent came over—Jack McCarthy of the FBI Hauppauge office came over with Margot Denedy and there was a supervisor there who was really more involved in something else, but he happened to be an FBI supervisor and happened to be in on the meeting. And Weinberg was there. So I met Weinberg and heard about Abscam at exactly the same time.

[69] Mr. Neal. What did you have to do with the approval or selection of Weinberg as the informant/cooperating individual?

Mr. Puccio. Well, I did not select him. I think it is more a case of me being dissatisfied enough with Weinberg to say, "Look, we are just not interested in this type of case," or if I had specific problems with Weinberg, I would just say what problems I had.

Mr. Neal. Well, I believe you told me that you were aware—or if you did not tell me, correct me—you were aware that he had been an informant for the FBI in the past?

Mr. Puccio. Right.

Mr. Neal. And you were aware that his services had been terminated because he was running a scam on the side during that period of time?

Mr. Puccio. Right.

Mr. Neal. You were aware of that?

Mr. Puccio. Uh-huh.

Mr. Neal. You were aware that he was prosecuted for that, and then the FBI got him probation rather than a 3-year sentence?

Mr. Puccio. Well, to put it in some legalese, I might quibble with the fact that the FBI "got" him probation.

Mr. Neal. Well, they tried to get him——

Mr. Puccio. They made a recommendation in behalf of the sentencing judge, and the judge rendered the sentence.

[70] Mr. Neal. And made a recommendation as to what he was going to do for him?

Mr. Puccio. Right.

Mr. Neal. All right.

Mr. Puccio. I think between the time he pleaded guilty and the sentence, he had produced a couple of cases for us.

Mr. Neal. And you were aware, I suppose, that probably he had never made an honest dollar in many years?

Mr. Puccio. I suspected that he was not your ordinary, nice businessman from Long Island, yes.

Mr. Neal. And in 1978, the so-called Levi Guidelines on the selection of informants were in existence, and they require a finding of suitability. One of those findings—one or two of those findings or requirements—are that he be found to be reliable, or there be a way of checking what he says, in effect, what he says and does. Are you aware of that?

Mr. PUCCIO. Generally aware. I have read the guidelines. It has been quite a while.

Mr. NEAL. Did you make any finding as to his reliability?

Mr. PUCCIO. I did not make any independent assessment in April 1978. I was told that he had been very, very productive and made cases. I assumed that that spoke for his reliability or spoke to his reliability. As it turned out, the file reflects that he was a reliable informant.

Mr. NEAL. Did you question the fact that he had been [71] terminated in the past because he was running a scam while he was an FBI informant? I mean, did you discuss that?

Mr. PUCCIO. I do not know if I specifically discussed that, but it did not come as a surprise to me that an FBI informant was out there, conducting his own little illegal business on the side, nor would it ever come as a surprise to anyone involved in law enforcement activities that informants do that.

Mr. NEAL. It would not surprise you if he continued to do that after Abscam, would it?

Mr. PUCCIO. "Surprise," probably not.

Mr. NEAL. It would not surprise you that Mr. Weinberg would do whatever he could, if he could—if he could get away with it—to share in the bribes of some of these people, would it?

Mr. PUCCIO. Well, in this——

Mr. NEAL. If he could get away with it.

Mr. PUCCIO. I mean, if we assume that the kind of person you use in one of these operations is someone who will do anything he can get away with, then maybe you are correct. But in an operation where we are paying out Government money, we assume that we can deter any such effort like that.

Mr. NEAL. You assume you can.

Mr. PUCCIO. And we assume it is pretty difficult to pull off.

[72] Mr. NEAL. Sure. But in terms of——

Mr. PUCCIO. I have heard the allegation before that it has happened. I am familiar with it.

Mr. NEAL. In terms of his desires, it would not surprise you that he would like to do it or would try to do it?

Mr. PUCCIO. Well, I think it might be—if it is possible, we might be being a little unfair to Weinberg. I mean, we did not look at him as the devil incarnate and someone who was constantly scheming. He was a rogue, he was a crook, he was someone who had to be utilized in this kind of operation. We tried to keep an eye on him, keep him honest, quote-unquote; it is something you are aware of. Can I give you a contract at the beginning of an operation that the guy will not take a nickel? No, I cannot do that.

Mr. NEAL. And that is part of the risk you take when you select these people, isn't it?

Mr. PUCCIO. Exactly, exactly. It is the down side.

Mr. NEAL. I mean, after all, you are looking at people who know crooks.

Mr. PUCCIO. Right. That is the up side.

Mr. NEAL. And the down side is that they are probably crooks themselves?

Mr. PUCCIO. Absolutely crooks themselves.

Mr. NEAL. And of course, you are aware that he had acted in a crooked fashion at one time in the past?

[73] Mr. PUCCIO. That is why he was a crook.

Mr. NEAL. After he has been selected as a cooperating individual, did you meet with him or give him any instructions as to what to do?

Mr. PUCCIO. Occasionally.

Mr. NEAL. Well, let us say in the beginning, now. This operation is now—and by the way, the records of the Department of Justice reflect that this operation known as Abscam—to recover stolen securities, art, compromise a hoodlum, get information regarding skimming in Las Vegas, basically, I think, sets forth the objectives—was approved in June or July of 1978, application for approval in May. Before it started, did you sit down with Weinberg and give him instructions as to what he was to do in the operation?

Mr. PUCCIO. At the first meeting, we generally discussed what our role would be, that I would assign an attorney, and I did, and that the attorney would for the most part be dealing with the FBI personnel, but would occasionally be speaking to him, and we would be sort of clearing things, steps that would be taken. I think a lot of the first meeting was taken up with Weinberg's concern for his physical safety and possible witness program-type—there was a witness program discussion during that meeting——

Mr. NEAL. Did you meet with the people who were going to act, then, as FBI undercover agents?

[74] Mr. PUCCIO. Well, McCarthy, who was at that meeting, was the undercover agent.

Mr. NEAL. All right. Do you have any role at meetings like that, to instruct them on their duties—for example, preparing 302's, recording every meeting you can with targets, that sort of thing?

Mr. PUCCIO. Well, preparing 302's was generally—that is not something generally that would be discussed. The FBI, I have always found, understands its obligation to prepare 302's when appropriate or when possible. You are really getting down to the nitty-gritty on that. I do not think we would have discussed that at this meeting in April. This would be left to the attorney who was working with them. It was understood that in any undercover operation, we want as much recorded as possibly can be recorded. We were going to be getting, in the ordinary course of events, copies of the transcripts and the tapes, and we would be listening and making our own judgments.

Mr. NEAL. Well, the thing that concerns me, Mr. Puccio—and maybe this is not your role—but I can cite you in the Department of Justice files, and not from Mr. Plaza, but from others in the Department of Justice, stating things like there are countless, unrecorded meetings with targets, or contacts with targets—a problem, a problem that was brought up as early as April 1979. And my question is, Is that the role of the attorney who is 50-50, you say, to make sure at the [75] beginning that these things are done, or is that the FBI's role?

Mr. PUCCIO. Just to speak to the attorney's role, generally, the attorney should be providing the FBI with advice as to what is going to make for a prosecutable case. And the issue of not recording conversations, if that is going to create a problem for the case, it is going to make it tougher to prosecute the case. And I would expect an attorney to tell the Bureau agent, "Look, if things are not done in a certain way, when we get to court, a defense attorney is going to make mincemeat out of us." But I think if you check the tapes here, you will not see that that is the case, and obviously, that never happened at the trial.

But the unrecorded conversation issue has to be analyzed in terms of when and who, OK?

Mr. NEAL. And we will get to that. I am really talking about——

Mr. PUCCIO. I mean, you really cannot talk about it generally.

Mr. NEAL. I am talking about the instructions now. Then, there is really no place that the attorney sits down and says, "Now, I want you to do this and this and this," in great detail in these operations?

Mr. PUCCIO. I think an attorney does that as you go along.

[76] Mr. NEAL. As you go along?

Mr. PUCCIO. Sure. Maybe at the outset. I mean, we are dealing here with very experienced attorneys who have run undercover operations. We are dealling with experienced agents. I do not know that we would go through some litany or checklist of matters before an operation would be undertaken, but during the course of it, you can be sure that any one of these issues would have been discussed.

Mr. NEAL. All right. Now, one of the safeguards says that you do not open an undercover operation unless there is a reasonable indication of a pattern of criminal activity in an area. I read that to you starting out.

Mr. PUCCIO. Right.

Mr. NEAL. Does the attorney determine that reasonable indication? Do you sign off on that?

Mr. PUCCIO. We certainly have to be convinced that the undercover operation is being opened for some viable reason, that it has some potential for success, or we would not want to waste our time on it.

Mr. NEAL. All right. Did you determine that in April or May 1978?

Mr. PUCCIO. Based upon what I heard, it seemed that—and I will tell you how I viewed my role in this initial meeting. We had a number of undercover operations. I was presented with Abscam as a potential undercover operation. It did not strike [77] me as the greatest case in the world—or, it did not strike me that it had the potential of being the greatest case in the world. However, I did not really feel I could tell the FBI, "Don't do it," because there were some serious crimes that could have been uncovered, and I said, "OK, we will work with you on it."

That was my initial role in Abscam. We had other investigations which were, at the time, much more promising by comparison.

Mr. NEAL. While we are on that, this started out, as you say, as a noncorruption, recovery of stolen securities, et cetera. Were there any cases made as a result of Abscam and prosecuted, other than the political corruption cases?

Mr. PUCCIO. I think so. I think there was an art theft case where a couple of people were convicted, and there were some other offshoots involving fraud, but I would have to check the records.

Mr. NEAL. Wasn't the art case made before Abscam was approved as an undercover operation?

Mr. PUCCIO. It could be, it could be. There were cases that were developed that were either prosecuted, or there was some intent to prosecute them. They may have been cast by the wayside as a result of all the attention that Abscam, the political end of it, has gotten.

Mr. NEAL. Am I not correct that from the time Abscam [78] was approved now, as an undercover operation, until it turned clearly to political corruption, that the only case made was the so-called Bell case, and that that has yet to be prosecuted?

Mr. PUCCIO. No; they would have certainly taken a back seat to any of the major cases. I think you would have to get from the Bureau—I hate to pass the buck to them—but there is a record somewhere of what happened to these other cases, and maybe some of them are still pending in U.S. attorneys' offices; I do not know.

Mr. NEAL. As you sit there, do you recollect any of them, between the period after Abscam was approved and the public corruption phase?

Mr. PUCCIO. I cannot be sure. I think there was a case called *U.S. v. Roberts* in the Southern District; there was an art case in the Southern District. I am pretty sure the Southern District withheld prosecution in the art case because of Abscam. You are really testing my recollection at this point. I did not focus on these cases.

I know at one point, a lot of these other fraud cases were going to be presented. Now, whether that has been viewed as really, at this point, as not worth the trouble, I do not know.

Mr. NEAL. OK. At some point, the Abscam investigation turned to political corruption, right?

Mr. PUCCIO. Right.

[79] Mr. NEAL. I would assume that under the safeguards that we have just mentioned, that somebody again would have to find a pattern of criminality in an area before that change of direction should be made; is that correct?

Mr. PUCCIO. I thought you said that the test was whether there is reason to believe that it is occurring or likely to occur.

Mr. NEAL. Well, we can get it. I have used the shorthand, reasonable indication of a pattern of criminal activity, but I will read it. Stated differently, "We only initiate investigations, and we only use the undercover technique when we reasonably suspect that a criminal activity of a given type or pattern is occurring or is likely to occur"—that is one expression of it. The other is, "We impose upon ourselves the requirement that there be a well-founded suspicion of criminal activity in a sector or area before commencing an undercover operation."

Mr. PUCCIO. Right; I think the first part of that is what would apply here, that it was reasonably likely that a criminal activity was going to occur or had been occurring.

Mr. NEAL. All right. When it changed clearly to a political corruption undercover operation, what did you have to do with that? Did you determine a reasonable indication? When did it come to your attention that this was now a political corruption undercover operation?

[80] Mr. PUCCIO. Late 1978. What came to my attention is that we had gone from nonpolitical, let us say, criminal activity to activity involving official corruption or the potential for it. That is what came to my attention in late 1978. Now, I do not know that in terms of the actual implementation of a plan or the actual steps that were taken, that anything different was done; in fact, I suspect that we did not operate any differently, except obviously, official corruption cases are very, very sensitive. And I think I may have said to you before, Jim, that before it became an official corruption type matter, it was not clearly within our area or priorities which the strike forces were directed to approach. It became a much more important case in late 1978. It became a case where the hierarchy in Washington was kept more apprised, that I spent personally more time on.

Mr. NEAL. Well, let me——

Mr. PUCCIO. But the actual mechanics of how we would deal with it were not that different.

Mr. NEAL. Let me get to my problem, and we are talking about the facial aspects of the guidelines as compared or contrasted with how they work in practice. And the guidelines make it appear that before you start into an undercover operation, you have this reasonable indication.

Mr. PUCCIO. Right.

Mr. NEAL. And the testimony has been that before you [81] change this suddenly to a new direction—which makes sense—that you find a reasonable indication.

Now, my concern here is that one could argue that it is Weinberg who is changing the direction of an undercover operation. Now, it may be that in an undercover operation, you cannot really make these nice determinations before you are into something. But for example, it is Weinberg in September and early October who is saying, "We have got to get a politician involved. You can get your money or financing only if you get a politician." We talked about this before.

Mr. PUCCIO. OK, right. Let me just first maybe clarify the——

Mr. NEAL. Now, that is before Mr. Errichetti ever comes in.

Mr. PUCCIO. That is right. Let me just clarify this concept of changed direction. I really would not look at it that way. You really do not get a direction until you have a number of cases going that way.

What normally happens in an undercover operation is you get a set of circumstances which you have to react to, and you examine and see whether, if you go ahead, there is going to be a violation. And that is what was done in Abscam. We got to a point with Errichetti where we were talking about a different kind of violation.

Now, what could very well have happened after we paid [82] Errichetti is that we would have gone back to the other stuff again and never "changed direction," as you put it. So the direction did not really change until this thing sort of caught fire, and all that was happening was in the official area.

Now, on this September 1978 Weiss conversation, which was raised at one of the due process hearings——

Mr. **Neal**. And the October 6 Weinberg/Rosenberg.

Mr. **Puccio**. OK. Well, I reviewed the Weiss one recently, and I can only tell you that in my mind, it was just not a factor. I am not even sure that I was aware of this. It is a 75-page transcript. There is about a page or a page and a half on this question of bringing in a politician, and in reading it and hearing it at a due process hearing as well, and reading it recently, it certainly does not appear to me to be any serious attempt to bring the whole operation into the political corruption area. Weinberg would throw out a lot of things at meeting with people, crooks, to put it bluntly, but he could not run the operation. That is what an operative is supposed to do, is throw out feelers, and maybe some of them came back positive, others negative, and then we decide as best we can what to follow-up on, which lead to the most viable.

You cannot stop an undercover operative from saying things. But he was not running Abscam. I know that charge has [83] been made in some quarters and it strikes me as ridiculous.

Mr. **Neal**. Well, it has been made, and——

Mr. **Puccio**. Yes, a lot of charges have been made.

Mr. **Neal** [continuing]. It has been made not just by Mr. Plaza. It has been made by others.

Mr. **Puccio**. By defense attorneys.

Mr. **Neal**. Well, no. By other prosecutors in the Department of Justice. But let me get to that in a moment, if I may.

When did you become aware that Mr. Weinberg, in September and in October, before Mr. Errichetti, was talking about politicians, "You need politicians involved"—and with respect to Mr. Rosenberg, he is talking about, "You got to have the juice in Atlantic City." Was somebody reviewing these tapes and seeing that that was going on?

Mr. **Puccio**. Yes, right, yes.

Mr. **Neal**. And the October 6 conversation leads directly to——

Mr. **Puccio**. Which question do you want me to answer? I did not become aware of these particular conversations for a long time, probably not until the time of the due process hearing. They were not significant conversations.

Mr. **Neal**. So, you were not aware of these conversations during the covert stage?

Mr. **Puccio**. No.

Mr. **Neal**. Do you know anyone who is aware of these [84] conversations?

Mr. **Puccio**. I am sure the Bureau was.

Mr. **Neal**. The Bureau? Are you sure?

Mr. **Puccio**. Sure. I would assume so. They were transcribing the tapes.

Mr. **Neal**. Well, are you saying that Mr. Weinberg simply, then, is throwing this out to see what happened?

Mr. **Puccio**. Right.

Mr. **Neal**. Is that the way an undercover operation sort of changes direction?

Mr. **Puccio**. Sometimes, sometimes. The operative is expected to know more about this stuff than the agents, by the way. The crook is supposed to know more about what is going to appeal to crooks than the agents know, so this is sort of standard. I am telling you in this case, it did not go into the political area as a result of the September conversation. It was because of conversations later on with Eden and Rosenberg.

Mr. NEAL. Well, as a matter of fact, a couple of weeks later, Mr. Weinberg is talking to Mr. Rosenberg—and this is before Errichetti—and they talk about—Mr. Weinberg talks about—the need for "juice in Atlantic City."

Mr. PUCCIO. Right, "juice," meaning——

Mr. NEAL. And then the next thing that happens is Mr. Errichetti comes in, and it is now a political corruption case. [85] Is that the way changes are made in direction? That is my question.

Mr. PUCCIO. Well, if that is—I do not know that I would say that a change in direction occurs that way, but if that is how a case developed, I do not see any problem with it. I do not think this one developed as a direct result of that, but maybe it did—so what? I do not see the point.

Mr. NEAL. Well, who is making the finding of reasonable indication?

Mr. PUCCIO. Oh, OK. Before you take a step with a public official, I think you have to sit down and figure out whether you should go forward with it, and that is when you apply those principles. But throwing things out, this constant chatter—if you sat down and listened to these conversations, you would be here for weeks, just listening to Weinberg talk to all these people. It would drive you crazy. I mean, they cover every subject in the world.

Mr. NEAL. I understand that.

Mr. PUCCIO. OK.

Mr. NEAL. So what you are saying is that the reasonable indication of criminality comes before you make a bribe offer?

Mr. PUCCIO. Right.

Mr. NEAL. Not before you direct it to political corruption?

Mr. PUCCIO. I think we are really playing on words here. [86] In the course of a conversation, if it is natural to discuss with a crook the possibility of paying off a public official—if that is natural—and if it is the role that the undercover operative is playing, Weinberg in this case, and he says it, and somebody comes back and says, "Well, I have got somebody who might be interested as a public official," nothing serious—these are feelers that are thrown out—nothing serious happens in terms of making an offer until it is analyzed. I do not think any undercover operative is prohibited from talking about politicians or stock swindlers or any particular area. It is what is logical under the circumstances.

Mr. NEAL. All right. Then, later on, after Mr. Errichetti is there, there are a number of conversations, in March, then, initiated by Mr. Weinberg, to the effect that if you are going to get financing, you are going to have to get a politician involved. Are you aware of those conversations?

Mr. PUCCIO. Is this the Weiss conversation?

Mr. NEAL. We have moved from Weiss. We are talking now about in March 1979, March 1——

Mr. PUCCIO. Oh, March 1979?

Mr. NEAL. Yes.

Mr. PUCCIO. Who was Weinberg talking to?

Mr. NEAL. Weinberg is talking to Ellis, he is talking to a man whose name I will not mention, up in Atlantic City—do you know who I am talking about?

[87] Mr. PUCCIO. Yes, I know who you are talking about, and I think he is from New York, yes.

Mr. NEAL. Well, maybe he is from New York.

Mr. PUCCIO. Right.

Mr. NEAL. I mean, Weinberg is saying in the course of these conversations that, "Look, if you are going to get financing, you are going to have to get a politican involved who can provide the license and all of that."

Mr. PUCCIO. Well, yes. OK, OK.

Mr. NEAL. How does a scenario like that——

Mr. PUCCIO. Well, by then, we are into a few of these payoffs, at least one, right, by that time?

Mr. NEAL. Is the——

Mr. PUCCIO. Now the direction, to use your phraseology, is toward the political arena.

Mr. NEAL. All right.

Mr. PUCCIO. And now, Weinberg is talking about, "Well, we want to know—if you want financing, you have got to assure us you can get a license." I mean, he has been through this with Errichetti, and now he is talking a little bit more about it to someone else.

Mr. NEAL. Now, is somebody telling him to say that, or is this improvisation on his own?

Mr. PUCCIO. A combination of both.

Mr. NEAL. A combination of both. All right. And then——

[88] Mr. PUCCIO. Now, as best I understand it. If you are talking about that specific conversation, you would have to sit down and reconstruct what happened there. But it is a combination of the two. It is expected that the informant will have some ideas of his own.

Mr. NEAL. Then you move on down to the asylum scenario. When did you first hear of the asylum scenario?

Mr. PUCCIO. July 1979.

Mr. NEAL. You are aware by now that it was first articulated by Mr. Weinberg on July 14, in a conversation with Mr. Katz?

Mr. PUCCIO. I heard that argument made by some of the defense attorneys at the due process hearing. I have heard the tape.

Mr. NEAL. Have you listened to the tape or heard the transcript?

Mr. PUCCIO. I listened to the tape, right. In fact, I listened to it again yesterday. Actually, if you listen to the whole coversation, my recollection of it now is that it is sort of an aimless—that they talk for a long time about the titanium mine and Senator Williams and what was going on there, and they sort of drift into this business of the Arabs wanting to seek asylum here. And it seemed to me—and you could play the tape or listen to it—that Katz knows a lot more about it than Weinberg. He is the first one to mention Congressmen. [89] He says at one point, "You are going to need help in Congress." My judgment of Weinberg's state of mind at that point is he did not really understand what Katz meant, specifically, and this idea—this is the 14th, and the 26th, it is discussed by Amoroso on the boat meeting in Fort Lauderdale. My understanding of what happened is that it came up at this boat meeting as a result of this newspaper article, and Amoroso threw out the proposition to the people who assembled there, Mayor Errichetti and Criden and others. That is the way it has been testified to, and that is my understanding of what happened.

Is it possible that, as a result of Weinberg's conversation with Katz, that some talk occurred about it? I do not think it was quite that planned or quite that clearly defined. Maybe Weinberg had a little bit of this idea in his head from Katz, and he got together with Amoroso—you would have to ask Amoroso, but this thing really took off on July 26, and that was when I first heard about it.

Mr. NEAL. You heard about it, what, after the boat trip?

Mr. PUCCIO. I either heard about it before or after—I am not sure. I really do not know. It was right at the end of the month. I went on vacation during August. I know that at one point, when it appeared that it was going to be—John had called me and said that this thing was sort of developing and what did I think of it, and it struck me as a very good [90] area for us to go into.

Mr. NEAL. To go into?

Mr. PUCCIO. Yes.

Mr. NEAL. All right. Why would it strike you as a very good area to go into?

Mr. PUCCIO. I had a sense, maybe based upon what I read in the newspapers, based upon the publicity given to the *Helstoski* case, that this was a tremendous area of abuse, and it turned out that——

Mr. NEAL. The private immigration legislation?

Mr. PUCCIO. Yes, and I think the facts bore that out.

Mr. NEAL. Well, you keep saying "the facts bore that out"——

Mr. PUCCIO. That is the first time I have said that.

Mr. NEAL. Pardon me?

Mr. PUCCIO. I think that is the first time I have said that.

Mr. NEAL. All right. You thought it was a good idea, and that the reasonable indication of criminality was based on your reading of the *Helstoski* case?

Mr. PUCCIO. Just generally, I had a general understanding that this was an area where there had been a lot of abuse.

Mr. NEAL. Well, is that what the reasonable indication of criminality means, that you have got a generalized understanding that there has been abuse?

[91] Mr. PUCCIO. No, no, no. That is not right. Amoroso throws out this proposition——

Mr. NEAL. Somebody does—Weinberg or Amoroso.

Mr. PUCCIO. Whoever throws it out, I think it makes little difference. Somebody throws it out. It is grabbed ahold of. Errichetti grabs ahold of it and runs with it and comes back and says, "Look, I have got Congressmen who can, for money, introduce a bill and give you help." We discuss whether or not we should go ahead with this. There is really little choice.

Was it a new kind of animal I had never hear of? No. I had heard that Congressmen would take money for private immigration bills. Maybe what I heard was untrue, but I——

Mr. NEAL. Did you approve the asylum scenario, going forward with it?

Mr. PUCCIO. Yes, yes.

Mr. **Neal**. You did it based on your generalized understanding that this was an area of abuse?

Mr. **Puccio**. Well, that only assisted me in understanding what Errichetti was saying. Errichetti had demonstrated himself to be thoroughly corrupt at that point and had produced corrupt public officials, OK? Now, he is coming up with something else. He can produce Congressmen for a new thing, namely, they will come in, they will guarantee you asylum or a private bill, and they get paid for it. Had I ever heard of [92] this kind of thing? Yes, I had heard of this kind of thing going on. It was an entire picture. If I had never heard of a Congressman taking money for a private bill, we still would have gone ahead, because Errichetti was a proven commodity.

Mr. **Neal**. Well, I know, Errichetti picks it up. There is no question about it. But you would agree with me that the asylum scenario—getting the sheik in here, and getting him asylum—is an operation aimed at Congress.

Mr. **Puccio**. It is an operation aimed——

Mr. **Neal**. I am not meaning targeting any individual. I am talking about it is aimed at Congress.

Mr. **Puccio**. OK, all right. If you have been asked these questions as many times as I have, Mr. Neal, you would hesitate, too. I do not want to create the impression that anybody was targeting Congress. It was an operation aimed at anybody corrupt who could offer immigration assistance. Now, if Congressman were the people who could do that, there are other people who could do it, too. People in the Immigration Service could do it.

Mr. **Neal**. All right.

Mr. **Leahy**. Mr. Chairman, I do not want to destroy Mr. Neal's chain of questioning, but I would like to followup just a tad on that.

You said that you had heard of this before, but this is the first time you were willing to go and investigate it. What [93] had you done when you had heard of it before?

Mr. **Puccio**. Well, probably nothing. I heard of a lot of things. I heard of—when I was a prosecutor, I would hear of crimes occurring all the time. In the city of New York, there is not much a Federal prosecutor could do on most of those things. You go where the leads are.

Senator **Leahy**. Well, let me go back to the specific, though, that you had heard of Members of Congress involved in selling, in effect, immigration, selling asylum.

Mr. **Puccio**. Private bills.

Senator **Leahy**. What did you do about that when you heard about that before?

Mr. **Puccio**. What did I personally do about it?

Senator **Leahy**. Yes.

Mr. **Puccio**. Nothing, that I recall. What should I have done about it?

Senator **Leahy**. Well, I am just asking you what you did. In this case, when you heard about it, you went ahead with an investigation.

Mr. **Puccio**. Sure, but here I had a vehicle for doing something about it.

Senator LEAHY. Had you no vehicles whatsoever when you heard about it before?

Mr. PUCCIO. I am sure I did not, or I would have followed it up.

[94] Senator LEAHY. Well, what did you hear before?

Mr. PUCCIO. I would have to really dredge the recesses of my mind. I mean, I think it was sort of common knowledge that that was an area of abuse. I think that editorial writers had written about it. I think that there had been accusations made. There was the *Helstoski* situation.

Senator LEAHY. During what period of time was this——

Mr. PUCCIO. I do not know exactly, but I would say certainly in the 2 or 3 preceding years, working back from July 1979.

Senator LEAHY. You are saying this was very common knowledge, a very common thing, and yet you did nothing, you felt no need to look into it, no need to step forward in it?

Mr. PUCCIO. Well, the Department of Justice does not quite work that way. I mean, you work on cases that show promise. I heard a lot of things. I heard, for instance, that so-and-so is the head of organized crime in New York. I did not do anything about that—I mean, that kind of information. There is really nothing you can do unless you have a way of initiating the case.

Senator LEAHY. Well, here, you were able to develop a way of initiating the case and doing it in the way you have described. If you were to hear of a Member of Congress who was selling immigration bills—you say it is such common knowledge; I, frankly, had not heard of this before I came to [95] these hearings, but you say it was very common knowledge—do you mean there would be no attempt made by the Department of Justice to followup on something of such common knowledge?

Mr. PUCCIO. If there were a specific allegation. I can think of no specific allegation. By the way, I do not mean——

Senator LEAHY. Do you mean this is, then, just tarring the whole Congress? Does everybody in Congress——

Mr. PUCCIO. No, no, no, no. It is an area of abuse, like it was rumored at one point that narcotics detectives in the city of New York were keeping a portion of the narcotics they seized, or were taking money from narcotics sales. It was rumored. It was not until an intensive investigation was conducted that got underway really through a fluke, that this was uncovered. The same thing here. It was rumored that Congressmen were taking money in private bill matters, and Abscam proved that that was the case.

Senator LEAHY. Well, does it not—I am not too sure of that. You are talking about rumors; you said something about it being common knowledge. And again, I must say that perhaps in Vermont, we lead more sheltered lives, and we do not hear about these things. We do not get to read Southern newspapers like the New York Times, in which you refer to editorials and whatnot. But let us be more specific.

You say that it was well known that this was going on in Congress. Again, I ask, if this was well known, was it [96] well known that all 535 Members of Congress were doing it—214—108?

Mr. PUCCIO. I cannot answer any of those questions. I do not know. All I know is when Errichetti suggested it, it was not the first time that I heard that kind of thing was going on.

Senator **Leahy**. Had you been aware of any attempt ever on the Department of Justice to go and investigate Members of Congress——

Mr. **Puccio**. Helstoski.

Senator **Leahy** [continuing]. If I might finish—Members of Congress who were selling private bills?

Mr. **Puccio**. Helstoski. Helstoski in New Jersey was apparently selling private bills, or it was so alleged.

Senator **Leahy**. And was there an investigation made of that?

Mr. **Puccio**. Yes, an extensive investigation.

Senator **Leahy**. And when was that?

Mr. **Puccio**. I do not know exactly.

Senator **Leahy**. Just give us approximately.

Mr. **Puccio**. Seventy-eight, seventy-seven, seventy-six.

Senator **Leahy**. And what was the result of that investigation?

Mr. **Puccio**. The investigation proved to be very positive. However, the case was later abandoned because the [97] Supreme Court ruled that there had been some violations in the grand jury of the speech and debate clause, and that evidence of the private bill being introduced could not be introduced at the trial.

In other words, it was a technical violation; it was not one on the merits. The merits of the matter were that there was abuse in the situation there.

Senator **Leahy**. What other cases?

Mr. **Puccio**. Offhand, I do not know. There have been others. I am sure the Department——

Senator **Leahy**. Were there any that went through your office.

Mr. **Puccio**. Excuse me?

Senator **Leahy**. Even though this was, as you described it, a matter of common knowledge, were there any such cases that went through your office?

Mr. **Puccio**. I would have to check. I would have to check. I do not know—personally, that I handled before this, no.

Senator **Leahy**. You mentioned a few minutes ago in answer to Mr. Neal's question, going off to vacation in August—and I lost track in my notes—what year was it?

Mr. **Puccio**. Seventy-nine.

Senator **Leahy**. Seventy-nine. Was that the vacation you took sharing a summer house on Martha's Vineyard with Jack [98] Newfield, an editor for the Village Voice?

Mr. **Puccio**. Yes.

Senator **Leahy**. And was Mr. Newfield subsequently approached to sell his story on Abscam, or sell a story on Abscam?

Mr. **Puccio**. Yes, I think he certainly was, as far as I know.

Senator **Leahy**. Did you discuss what was going on in the Abscam investigation with Mr. Newfield in August of 1979?

Mr. **Puccio**. No, no.

Senator **Leahy**. At no time whatsoever during that month while you were sharing his home in Martha's Vineyard did you discuss this investigation?

Mr. **Puccio**. That is right.

Senator **Leahy**. Did Mr. Newfield ever ask you later to cooperate with him on a book?

Mr. **Puccio**. Yes, at one point he did.

Senator LEAHY. When was that?

Mr. PUCCIO. Sometime after Abscam broke.

Senator LEAHY. Do you have any idea when that time might have been?

Mr. PUCCIO. February, March, April—probably February 1980.

Senator LEAHY. About 5 or 6 months or so after you had been at his home in Martha's Vineyard.

[99] Mr. PUCCIO. Right—well, it was not his home. We were two families—two families were renting a house.

Senator LEAHY. Well, a summer house. You shared a summer house in Martha's Vineyard in August of 1979.

Mr. PUCCIO. Yes.

Senator LEAHY. That was during the covert time of Abscam that you shared that with Mr. Newfield?

Mr. PUCCIO. Precisely.

Senator LEAHY. Now, sometime the next spring—February or March or whatever—Mr. Newfield talked to you about——

Mr. PUCCIO. About a book, yes.

Senator LEAHY. Yes. And what did you do?

Mr. PUCCIO. Nothing, really. I told him that I could not do it while the cases were going on.

Senator LEAHY. And did he tell you that it was at all necessary to have you on that book with him?

Mr. PUCCIO. I think his thinking was that it would be a better book.

Senator LEAHY. Did he say anything about his publishers actually wanted somebody to collaborate on that book with him?

Mr. PUCCIO. I do not think he was that specific at that time, no.

Senator LEAHY. Now, try to tell me as specifically as you can what he said in his approach to you.

Mr. PUCCIO. He was interested in doing a book. He [100] thought it would be a terrific book to do.

Senator LEAHY. What do you mean by terrific?

Mr. PUCCIO. It would be a good book to do. Newfield is a book writer.

Senator LEAHY. An interesting book? Is that what you mean?

Mr. PUCCIO. I have to assume that he wanted to write an interesting book.

Senator LEAHY. A lucrative book?

Mr. PUCCIO. I do not know that that was a particular motivation of his.

Senator LEAHY. Are you saying Mr. Newfield was not at all interested in whether he would make any money on it?

Mr. PUCCIO. No—probably not at all.

Senator LEAHY. Is this a pro bono book?

Mr. PUCCIO. No. I think that he is a rather successful fellow, and he has written many successful books, and he is financially well-fixed, or so it is said, and his concern is not making money on a book.

Senator LEAHY. So, what did you tell Mr. Newfield?

Mr. PUCCIO. I told him no, that I did not really want to discuss it, and there was obviously a case going on.

Senator LEAHY. Did you tell him you would never collaborate on any book with him?

Mr. PUCCIO. No, I did not say that.

[101] Senator LEAHY. Well, what did you say?

Mr. PUCCIO. I told him that the cases had not even begun, and I really did not want to get involved in a book project, and that was essentially it.

Senator LEAHY. Did he ask you if you might be willing to get involved with him once the book was over?

Mr. PUCCIO. He may have, he may have. I think it was his thought that he would persuade me. To the extent he articulated, I sort of understood he would persuade me to get involved when I could. I mean, that is the sense I get of it.

Senator LEAHY. And what was your response to that?

Mr. PUCCIO. Really, no response, just that I could not get involved in a book, and I did not foreclose the possibility of ever getting—it is sort of obvious, and it has sort of been the track record in these celebrated cases, that people, more often, perhaps, defendants and defense attorneys, but occasionally prosecutors, write books. In other words, I did not need him to tell me that.

Senator LEAHY. Have you ever made any decision to write a book about this?

Mr. PUCCIO. I have been thinking of it. Not seriously, but I have been thinking of it.

Senator LEAHY. Have you talked to any literary agents about it?

Mr. PUCCIO. Not really, not really—yes, I have. I am [102] sorry. I have spoken to a literary agent.

Senator LEAHY. Who is that?

Mr. PUCCIO. This is recently. I can supply you with the name—Stirling Lord.

Senator LEAHY. I beg your pardon?

Mr. PUCCIO. Stirling Lord.

Senator LEAHY. And when was that?

Mr. PUCCIO. Probably about 3 or 4 months ago, 2 or 3 months ago.

Senator LEAHY. Did you approach him, or did he approach you?

Mr. PUCCIO. I approached him.

Senator LEAHY. Have you had any literary agents approach you?

Mr. PUCCIO. I get letters—yes, I have had literary agents write to me, people write to me, asking me——

Senator LEAHY. Do you respond to them?

Mr. PUCCIO. No. I have not really responded to any of them.

Senator LEAHY. The letters just get filed or thrown away; no answer is sent?

Mr. PUCCIO. I do not want to create the impression that I get a few letters a day, but no, I have not really responded to any of the letters I have gotten on it.

Senator LEAHY. But you did approach Mr. Lord?

[103] Mr. PUCCIO. Yes.

Senator LEAHY. And what was the nature of your discussions as to a book?

Mr. PUCCIO. That I was thinking of it.

Senator LEAHY. Do you have any involvement whatsoever in these cases now?

Mr. PUCCIO. No.

Senator LEAHY. You are not in any way on a retainer to the Justice Department, a consultant to the Justice Department, or anything else?

Mr. PUCCIO. No, no.

Senator LEAHY. You have severed all connections with that?

Mr. PUCCIO. Yes. I resigned from the Justice Department, and I am in private practice. I guess that would pretty much describe it.

Senator LEAHY. Are you presently seeking any post within the Justice Department?

Mr. PUCCIO. No.

Senator LEAHY. Have you been approached to take any post within the Justice Department?

Mr. PUCCIO. No.

Senator LEAHY. What was the last position you were approached for taking within the Department of Justice?

Mr. PUCCIO. Probably, U.S. Attorney for the Southern [104] District of Florida, or U.S. Attorney for the District of Columbia. I do not recall. I mean, from time to time——

Senator LEAHY. Which was first?

Mr. PUCCIO. This was while I was still with the Department. I do not want to——

Senator LEAHY. I understand. Was it for southern Florida or——

Mr. PUCCIO. Southern Florida, first.

Senator LEAHY. And did you turn that down?

Mr. PUCCIO. Yes.

Senator LEAHY. What about the District of Columbia? Did you request, directly or indirectly, an appointment to that from the Department of Justice, or did they approach you?

Mr. PUCCIO. I was approached on that.

Senator LEAHY. Did that come as a surprise to you?

Mr. PUCCIO. Not really.

Senator LEAHY. Had you suggested to them that you would be available for such an appointment?

Mr. PUCCIO. I said I would think about it.

Senator LEAHY. Prior to them—I am talking about had you suggested to them that you would be available for such an appointment prior to the time they approached you?

Mr. PUCCIO. No.

Senator LEAHY. And then they approached you?

Mr. PUCCIO. Uh-huh.

[105] Senator LEAHY. Did there come a time when you told them that you would accept it if you were appointed?

Mr. PUCCIO. Which one are we talking about now, District of Columbia?

Senator LEAHY. District of Columbia.

Mr. PUCCIO. I said I would think about it, and then there was an article in the Washington Post that said that I had been selected for it, and I thought at that point, I had better start thinking about it. I sort of eased into it, let us say, after it was announced that I was going to be the U.S. Attorney in the District of Columbia.

Senator LEAHY. Let us talk about the "easing in" before we go to the "easing out." What about once you read the article in the paper, what did you say, the article that suggested that you had been selected?

Mr. Puccio. I said, "I had better talk to my wife about it." That is what I said.

Senator Leahy. And did there ever come a time that you told the Department of Justice that you would be willing to accept an appointment as U.S. Attorney?

Mr. Puccio. Yes, I think it was understood—I talked to my wife about it, and at least for a limited period, I would be receptive to taking this position.

Senator Leahy. Why didn't you get the appointment?

Mr. Puccio. I do not know, I do not know. Someone [106] else was selected.

Senator Leahy. During that time, were you having any discussions with anybody about a book on the Abscam matter?

Mr. Puccio. I doubt it. I really do not recall.

Senator Leahy. Were you ever given——

Mr. Puccio. Probably not, because it would not make sense, really to—I could not write a book if I were U.S. Attorney in the District of Columbia.

Senator Leahy. Why wouldn't it?

Mr. Puccio. I think it would probably create a lot of practical problems to be writing a book, even though the Abscam cases were over, because really, in the District of Columbia, there are a couple of Abscam cases still going on.

Senator Leahy. Now, where do you stand on the possibility of a book today?

Mr. Puccio. Nowhere, really.

Senator Leahy. Are you waiting to hear back from this agent?

Mr. Puccio. In a sense, I am not. I am not seriously thinking of it right now. If I hear back, and if I have the time, and it is worthwhile, I might do it. It is not likely, I should say.

Senator Leahy. Thank you, Mr. Chairman. And Mr. Neal, I apologize if I broke too far into that. I went a little bit further than I had intended in breaking into your line of [107] questioning.

Mr. Neal. No problem.

Senator Mathias. Well, the hour is 12:25. Both parties have caucuses today. So, Mr. Neal, if it is agreeable to you, we will recess for lunch, and we will resume the hearing at 2 o'clock.

[Whereupon, at 12:25 p.m., the committee was recessed, to reconvene at 2 o'clock p.m. this same day.]

[108] AFTERNOON SESSION

[Whereupon, at 2:25 p.m., the committee was reconvened, Hon. Charles McC. Mathias, chairman, presiding.]

Senator Mathias. The committee will come to order.

When we recessed this morning, Mr. Neal, you were about to proceed to address some questions to Mr. Puccio.

Mr. Neal. Mr. Puccio, I really want to stay with the so-called guidelines and safeguards, and I mentioned one of them was the fact that you do not start an undercover operation or drastically change the direction of an ongoing undercover operation without a reasonable indication of a pattern of criminality occuring—or about to occur, if you want to put it that way—in an area. I asked you about the creation of the so-called asylum scenario that clearly involved, at least in part, a direction to Congressmen. I am still confused about who developed that.

Indeed, I have a document from the files of the Department of Justice, written by a prosecutor on January 29, 1980, where this prosecutor—not Mr. Plaza—states that even at this time, in 1980, there appears to be confusion over how this scenario developed originally. He also expresses his concern about the propriety of the asylum scenario. But whether Mr. Weinberg started this asylum scenario on July 14, or Mr. Amoroso started this scenario on July 26, I believe you stated tnat you heard of it and approved it either before July 26 or after July 26. Have I properly [109] summarized your answer?

Mr. PUCCIO. Yes. I was informed of it and approved of it. There is no question about that.

Mr. NEAL. Did you approve of it before July 26 or after July 26?

Mr. PUCCIO. I have a feeling that after the boat meeting—I know I spoke to John Good on the telephone about it. It must have been very—I am almost positive it was very shortly after the boat meeting where this proposition had been thrown out by Amoroso—I will call it a proposition—and Errichetti had seized upon it, and within maybe 24 or 48 hours, there was an active proposal to bring in Congressman Myers and/or Lederer. That is when I must have really focused on it.

Mr. NEAL. Well, is it my understanding that your basis for reasonable indication was this generalized idea that there is abuse of the immigration bill area?

Mr. PUCCIO. I thought I answered that before. I add that on to give support to the conclusion that I read in 1979 that we should go into this area. But I think you may be overlooking the fact that a proven corrupt politician, namely, Errichetti, was bringing this to us, and whether I had heard of this kind of crooked deal before really did not matter. It happens I had.

By the way, during the recess, someone pointed out to me, and I have not had a chance to check it, but you might check—I [110] did check in preparation for one of the trials. As a result of the Helstoski—and Senator Leahy might be interested in this when he comes back—as a result of the Helstoski matter, the House of Representatives changed their rules on the introduction of private bills, in response to what the House itself viewed as a potential for abuse. I am sure there is a lot of discussion about that. That was all before Abscam, and it was all a matter of public record before Abscam.

Mr. NEAL. The problem we have with that in trying to figure out where you got your reasonable indication of a pattern of criminality to approve this new direction, we could only find one case in 200 years involving congressional action for production or introduction of private immigration bills, and that was the *Helstoski* case.

Mr. PUCCIO. I think you may be misinterpreting what I said. I think, however, you might check with the people in the House of Representatives, and they might be able to help you on that point. But when I am looking at the pattern of criminality, I am not slicing it that thin and saying that we are talking about immigration in particular. There was a pattern of criminality exhibited between

December 1978 and July 1979 of political payoffs and political influence peddling, et cetra, which was——

Mr. NEAL. In New Jersey, in new Jersey.

Mr. PUCCIO. Involving New Jersey figures, yes. But what [111] difference does that make whether it was just New Jersey? It was Errichetti who was at the center of that who was the same fellow who was bringing us the immigration thing.

Mr. NEAL. Well, are you saying that there was no difference between the New Jersey type of pattern and the congressional pattern?

Mr. PUCCIO. No—I consider that to be the same ball of wax. You know that Errichetti mentioned Congressman Myers back in March.

Mr. NEAL. But you did not do anything with that?

Mr. PUCCIO. Well, there was nothing to do with just the mention of a name.

Mr. NEAL. Well, that was all Errichetti mentioned after the boat trip, was a name.

Mr. PUCCIO. Oh, no, no, no.

Mr. NEAL. Well, there was not any meeting—when was the meeting?

Mr. PUCCIO. He produced. He went right ahead.

Mr. NEAL. When was the meeting with Congressman Myers?

Mr. PUCCIO. August 22.

Mr. NEAL. August 22—sometime, a month after the boat trip?

Mr. PUCCIO. Yes, but there was a lot going on in that period of time. Now, that was almost immediately set up.

Mr. NEAL. Then, your postion is that you really did not [112] see the asylum scenario as a different direction than the——

Mr. PUCCIO. No. That is right.

Mr. NEAL. Wait a minute, let me finish—than the New Jersey corrupt public officials of the State of New Jersey—MacDonald——

Mr. PUCCIO. No. And in fact, as you might know——

Mr. NEAL. I mean, is the answer, "Yes, I saw no difference"?

Mr. PUCCIO. No difference. I might just add that the Camden-Philadelphia area is considered, politically and geographically—well, they are next to one another, but politically it is considered to be almost like a unit. These people deal constantly, all the time—it was not even an extension in the sense——

Mr. NEAL. My question is, then, and I assume your answer is, that the real change of the undercover operation known as Abscam from recovery of securities to bribery of Congressmen actually occurred in January, February, March as a result of Errichetti, and that was the real——

Mr. PUCCIO. Exactly—Well, December 1978, but yes.

Mr. NEAL. All right. But that was the real change, according to you?

Mr. PUCCIO. That was the real change in the type of violation that was being brought in, yes.

Mr. NEAL. So there was no need to find a reasonable [113] indication of criminality, specifically with respect to the asylum scenario?

Mr. PUCCIO. That is right.

Mr. NEAL. Now, then, another so-called safeguard of this activity is that the illegality of the bribe offer, once the man is before the camera, will be made clear and unambiguous. Are you with me?

Mr. PUCCIO. Yes.

Mr. NEAL. All right. Are you familiar with the *MacDonald* case?

Mr. PUCCIO. Yes.

Mr. NEAL. Was the money handed to Mr. MacDonald in that case?

Mr. PUCCIO. It was displayed to him.

Mr. NEAL. Was it handed to him?

Mr. PUCCIO. No.

Mr. NEAL. Who took the briefcase out?

Mr. PUCCIO. Errichetti, in MacDonald's presence.

Mr. NEAL. In MacDonald's presence?

Mr. PUCCIO. Right.

Mr. NEAL. Can you look at the videotape, Mr. Puccio, and determine that MacDonald saw the money?

Mr. PUCCIO. Oh, yes.

Mr. NEAL. You can?

Mr. PUCCIO. He admitted that he saw the money.

[114] Mr. NEAL. No. I am saying—we are not talking about whether a person is guilty or innocent here, you understand. We are talking about the guidelines and whether they are followed.

Are you saying you can look at the videotape of the MacDonald matter and see that MacDonald saw the money?

Mr. PUCCIO. Well, you can conclude that, because the agent says, "Ken," and he points to the money.

Mr. NEAL. Can you see that from the videotape? The members of the committee have seen the videotape. Are you saying that is a clear——

Mr. PUCCIO. That is my recollection, that Ken MacDonald walks over to the window, pursuant to what I would call a prearranged signal; Errichetti turns around at one point and says to McCarthy, "Let's talk about the money for the future, my boy," or something to that effect. MacDonald zips over to the window and McCarthy, getting a little bit upset about it, opens the suitcase and flashes the money——

Mr. NEAL. Are you saying you could view that videotape and conclude that it is clear and unambiguous?

Mr. PUCCIO. Yes.

Mr. NEAL. You can. And you can conclude that Mr. MacDonald saw the money?

Mr. PUCCIO. Yes—well, I know he saw the money. He admitted he saw the money.

[115] Mr. NEAL. I am talking about looking at the videotape.

Mr. PUCCIO. I concluded that, and that was borne out by what he said.

Mr. NEAL. You concluded that, all right. Now, did you see the authorization document, authorizing the payment of that money to Mr. MacDonald?

Mr. PUCCIO. Maybe 2 years later.

Mr. NEAL. Are you aware that Director Webster wrote on that document, "Be sure the money is paid only to Commissioner MacDonald"?

Mr. PUCCIO. I have seen that since that time—I have seen or heard that since that time.

Mr. NEAL. Why wasn't that followed?

Mr. PUCCIO. Well, I cannot really answer that question. If I can just explain the relationship between the FBI and the Justice Department, that is the only way I can give you an answer to that question.

First of all, one thing that confuses me a little bit is your reference to guidelines. I assume that what you are referring to—just to step back a moment—is Phil Heymann's speech before the House Judiciary Committee after Abscam surfaced, where he pointed out certain safeguards that were employed during Abscam. Is that what you are referring to?

Mr. NEAL. That is what I am referring to, and to Mr. Webster setting forth the same guidelines and saying [116] specifically that the existing guidelines in the main incorporate those guidelines and safeguards that were in place during Abscam.

Mr. PUCCIO. Right. Director Webster was directing himself to FBI guidelines. To the extent that Assistant Attorney General Heymann spoke, he was speaking about what his conclusion was, based upon the practices that were followed during Abscam. I do not think you can say that there was anything written down during Abscam that coincided exactly with the words that we used in that conference that was held before the Judiciary Committee after. But be that as it may, we gave legal advice to the FBI. They had a lot of their own internal rules to follow, I suppose. I was not that much concerned with the FBI's internal rules. I was concerned with what the law was and what it took to make a case and a prosecutable case, because ultimately, we are the judge of that; the FBI is a client, in effect, that provides us with a certain information, a certain service, and we later represent them.

On this particular payment, I spoke to Director Webster myself on the telephone before the payment was made.

Mr. NEAL. MacDonald?

Mr. PUCCIO. That is right. The document you are talking about, I saw a couple of years later, or heard about a couple of years later, but we went over what was to be done here, and I understood—in my own mind, what I remember is that [117] it had to be clear that before money was paid, that MacDonald was part of this, that he was entering into this transaction. That certainly was clear to my satisfaction. I was not out there when the money was paid. When I saw the videotape played, I thought the agents fulfilled that. Now, so far as specific instructions within the FBI to do this, that or the other thing with respect to who gets it or what, you know that is of no legal significance. I was not concerned with that and only found out a couple of years later that there may have been certain instructions.

Mr. NEAL. Do you know why the instruction was not followed—that was my question.

Mr. PUCCIO. Assuming—well, no, I do not know the answer.

Mr. NEAL. All right. Let me take another one. Congressman Thompson. Have you seen the videotape on Congressman Thompson?

Mr. PUCCIO. Oh, yes—which one, now? I have seen all—it does not matter. I have seen them all.

Mr. NEAL. Am I not correct that he comes in, and there is a mention of money, and he says in substance that he cannot take that——

Mr. PUCCIO. He coughs and says, "I am not looking for any money."

Mr. NEAL. All right, and then he leaves, and then——

Mr. PUCCIO. Shortly thereafter, but before he leaves, he [118] promises to do what they were looking for.

Mr. NEAL. And then he leaves, and then there is a conversation with Mr. Criden; is that correct?

Mr. PUCCIO. Right.

Mr. NEAL. And then Mr. Criden brings him back again.

Mr. PUCCIO. Right.

Mr. NEAL. This next time, my recollection is—and if I am wrong, you tell me—no money was mentioned, and no money was shown to Congressman Thompson, and Mr. Criden leaves with a briefcase that was not opened during the meeting. Am I correct about that?

Mr. PUCCIO. If I were to answer that question, Jim, I would be engaging in a very silly exercise—with all deference—and for this reason. You could take a videotape machine out here right now, and in, I think it is 19 minutes, you could show the committee this videotape, and they could draw their own conclusions. If I were to answer that question, it would tell someone nothing about what happened.

What happened was, after this interim meeting—and you have to see it—Thompson comes back with Criden at 7 o'clock at night, and Criden says in the presence of Thompson, "Frank understands the situation, Tony," at which point the briefcase is slid over to Thompson, OK. There is some discussion at that time. Thompson is very open, and promising this, that, and the other thing, and very loose. They leave, and Thompson [119] grabs the suitcase, and at the same time Criden grabs it—it was almost a little bit like a comedy routine—they are both holding it, at which point Thompson turns to Criden and says, "Howard, you take care of that for me."

Now, a jury saw this tape, and naturally, returned the guilty verdict against Thompson; found specifically that he knew what was in that suitcase. I think if you saw the videotape, you would agree. There is no other conclusion you can draw, other than that he knew that money was in the suitcase. There was other evidence——

Mr. NEAL. I know the conclusion the court drew. But what we are dealing with here is not guilt or innocence, but whether the guidelines mean anything or not, whether instructions mean anything or not, whether there is a difference in the theory and the practice. And my question back to you is, in either one of those taped conversations, was money shown to Congressman Thompson?

Mr. PUCCIO. No.

Mr. NEAL. Was the briefcase ever opened in the presence of Congressman Thompson?

Mr. PUCCIO. No, no.

Mr. NEAL. Did Mr. Criden in fact leave with the briefcase?

Mr. Puccio. Thompson in effect handed him the briefcase, and he walked out of the room with it.

[120] Mr. Neal. Mr. Criden left with the briefcase.

Mr. Puccio. Uh-huh.

Mr. Neal. Now, the approval document on that Thompson episode, the document from the Director to Brooklyn-Queens, says, "Additionally, ensure that payment be made directly to the Congressman."

Mr. Puccio. They did that.

Mr. Neal. You think that was followed?

Mr. Puccio. Sure. I do not think it matters, but since you ask it, I think they did it.

Mr. Neal. Even though the suitcase was not opened. OK. And you think, then, that in that instance, that was a clear and unambiguous situation?

Mr. Puccio. No doubt in my mind that it was—it was done in a way that the agent felt those things are done.

Mr. Neal. Well, that is really my question. If the Director says, "Pay the money only to the man," and here, "Pay the money only directly to the Congressman," who makes the decision to vary that according to the circumstances?

Mr. Puccio. I am not really—I think you may be asking this question to the wrong person, because I was not really involved in that. If I pay off your bagman, to use the vernacular term, in your presence, what difference does it make? I would have never given that instruction, is what I am saying to you. It makes no sense, legally, or even factually, it [121] makes no sense.

Mr. Neal. You understand, Mr. Puccio, already that these middlemen lie to you.

Mr. Puccio. About what?

Mr. Neal. About whether they have done what they say to you they are going to do.

Mr. Puccio. For instance?

Mr. Neal. For instance, Senator Pressler. The middleman told you—and I am talking about institutionally, "you"—that Senator Pressler knew what was going on, that he would take a bribe of $50,000, and sell his office, OK?

Mr. Puccio. That is what he thought.

Mr. Neal. Now, that was untrue, wasn't it?

Mr. Puccio. I do not know what the middleman said to Pressler. I cannot testify one way or the other about that.

Senator Rudman. Let me just interject something here, Mr. Puccio, and let us just wait 1 minute here. You are jousting with counsel and all, and that is fine, and I understand that. But let us get some specifics here.

Are you aware of the fact now, after the fact, based on data that came out after that, that in fact, Mr. Silvestri had never met Senator Pressler until he picked him up in a car—or, rather, Pressler picked up—do you know——

Mr. Puccio. Apparently, they had not met until shortly before the meeting.

[122] Senator Rudman. Are you aware of that?

Mr. Puccio. Yes.

Senator RUDMAN. I really would like the stenographer, if possible—we do not have a taped transcript here—but can you recollect your previous answer, just when I interrupted?

Mr. PUCCIO. The question was, did the middleman lie about what he discussed with Pressler——

Senator RUDMAN. That is right.

Mr. PUCCIO [continuing]. And I really cannot comment on that. I do not know what the middleman said to Pressler or vice versa. Do you want me to draw a conclusion based upon——

Senator RUDMAN. No, I do not want you to draw a conclusion. You are a very skilled prosecutor. I have read the transcripts. I want to simply point out to you that it is a matter of evidence that Silvestri told Mr. Good one thing—or, Mr. Amoroso one thing—he was given specific instructions, following the guidelines precisely. Mr. Amoroso was following the guidelines, and it turned out when they got there that they had known each other for the space of maybe 10 to 12 minutes.

Based on that, do you want to stick with your previous statement, that you do not know what he told Senator Pressler?

Mr. PUCCIO. Maybe I am making—I think it is unfair of me—I really cannot say what the middleman said to Senator Pressler. I do not think it is necessary for me to speculate [123] on that. The fact was that it seemed to me that the Senator did not really fully understand—it seemed to me—fully understand what was expected of him, and to the extent that he did understand it, he rejected it, which seems to me to have been the right thing to do. Now, beyond that, I do not know where I can go with that.

Senator RUDMAN. Well, I have the advantage, maybe, of seeing this transcript later in time than you have, but let me just refresh your recollection, that upon arriving at the scene, Mr. Silvestri informs the agent, "Senator Pressler really does not know why he is here," at which point, Mr. Good, the operative is really in quite a turmoil, followed up by quite a chewing out, according to Mr. Good, afterward, which I take to be accurate. Based on that, isn't it a fair conclusion that he did not tell Senator Pressler anything?

Mr. PUCCIO. I think one can draw that conclusion.

Senator RUDMAN. Pardon?

Mr. PUCCIO. I think one can draw that conclusion.

Senator RUDMAN. Well, fine. At least we can get that on the record.

Mr. NEAL. I think the record, Mr. Puccio, is quite clear in this case, that middlemen would lie to the agents about what these Congressmen would or would not do. In some instances, they clearly did not lie, Mr. Puccio. In other instances, they clearly did lie to the agents about what the [124] Congressmen would or would not do. So my question to you is, isn't the Director exercising the care that one should when he says, "Be sure the money is paid only to Commissioner MacDonald," or in another instance "Ensure that the payment would be made directly only to the Congressman"—isn't the reason for that in this kind of an operation that nobody knows what the Congressman has been told by a middleman when he comes in?

Now, if you do not show the Congressman the money, or the target—let us say, the ultimate target—if you do not show him, the ultimate target, the money, and you know these middlemen lie to the ultimate targets and lie to the FBI, then isn't Mr. Webster saying, "Look, let's make sure beyond any shadow of a doubt, if an innocent man comes in, there will not be a concealed, closed briefcase there. We will absolutely know."

Now, it seems to me Director Webster is saying, "I want you to pay the money directly to the Congressman." And then there is a decision out in the field—and it may be an appropriate decision—not to do that.

Now, my question is—and Mr. Good or either one of you can answer it—what is the basis for that decision, which seems to me, at least, to vary from the instructions given? Mr. Good, would you like to answer that?

Mr. GOOD. I think I can best respond to that. The [125] ultimate decision to make the payment rested on my shoulders, and if it was to be halted, I would call Amoroso and tell him not to make the payment because we had not gotten the commitments, we had not fulfilled the necessary elements.

All of these cases, I felt that the elements were fulfilled. The Congressmen got constructive possession of that money. They knew what was in the bag, they were aware of what it was for. In connection with Congressman Thompson, in the morning, Tony Amoroso made it clear: "That is what the money is for." He said that very precisely to him. So there was no doubt in my mind at that time that Congressman Thompson knew what was in the bag, and he knew what it was for. There was no doubt in my mind, and that is why I allowed the payment to go through, and the same with the *MacDonald* case, also. And I felt that the Director's instructions were complied with, in that the Congressman was there—he was not sitting out in the car and somebody saying, "I will give it to him when I get out there."

Mr. NEAL. And with respect to Congressman Murphy, the same thing would be true, but there again, no money was shown Congressman Murphy.

Mr. GOOD. The same situation would have existed there, yes.

Mr. NEAL. All right. So what you are saying, Mr. Good, is that the decision on how to do this ultimately was left in [126] the judgment of the people in the field?

Mr. GOOD. That is correct.

Mr. NEAL. Mr. Puccio, let me ask you about another guideline. The other guideline or safeguard was that the inducement be a real life inducement; correct?

Mr. PUCCIO. Correct.

Mr. NEAL. Would you consider that the $12.6 million involving Senator Williams was a real life inducement? Did that bother you at all?

Mr. PUCCIO. No.

Mr. NEAL. You think that is real life in that circumstance?

Mr. PUCCIO. Considering Senator Williams' background and the kind of things that he had been exposed to in the business world and in the world as a Senator—I am sure that a Senator could make more than that if he wanted to sell his office. That did not particularly bother me one way or the other.

If I can just amplify it, without taking too much of your time, one of the things that troubles me about this whole area is we are law enforcement people. We are not experts on this kind of thing, on how you pay a bribe, whether you put it in a suitcase or a paper bag, or whether you show the money or you do not show the money, or what the going rate is. Essentially, what John is saying and what I am trying to say is that you do the best you can. You use your commonsense. You [127] certainly do not want to do anything that would appear to be stupid or something that is not done in this realm.

Mr. NEAL. Well, wouldn't it be just as good—suppose you do not, in an instance, make a case, but you show the money—there are a lot of cases out there that are not made.

Mr. PUCCIO. Right.

Mr. NEAL. Wouldn't it be better to go ahead and show the money so that there is no question about it?

Mr. PUCCIO. Do you mean, "This is a bribe. Here is the money. It is in the suitcase?"

Mr. NEAL. Well, yes, after you talk around it a while. I mean, presumably, he thinks he is dealing with crooks.

Mr. PUCCIO. I just do not think crooks operate that way. I think they are more sophisticated. In fact—well.

Mr. NEAL. So you think that the $12.6 million, then, is a real life inducement?

Mr. PUCCIO. Considering the background of the people involved, yes.

Mr. NEAL. Is there anything about the *Williams* case that bothers you, Mr. Puccio?

Mr. PUCCIO. Not really.

Mr. NEAL. How about the coaching session, where he is told by Mr. Weinberg that it is all play-acting, and "just B.S.." That surely bothers you, doesn't it?

Mr. PUCCIO. Well, you say "bothers" me. That was a [128] mistake that was made; it was corrected as soon as it was determined, and efforts were made to make sure that did not happen again. But I do not judge a case on the basis of one instance.

Mr. NEAL. I understand, I understand. And the real offense, according to the Government's theory, in the *Williams* case, was Senator Williams agreeing to work to get Government contracts for a business in which he had a hidden interest; isn't that correct?

Mr. PUCCIO. Well, the hidden interest did not really matter. I mean, you can commit a crime on 42d Street in Times Square, and it is just as much a crime out in the open like that.

Mr. NEAL. You do not think the hidden interest was important?

Mr. PUCCIO. No. That was not very important.

Mr. NEAL. I see. Well, you are aware that Senator Williams said on May 31 that he was going to disclose his interest.

Mr. PUCCIO. As I just said, if you commit a crime at 12 noon at 42d Street in Times Square, in the view of 1,000 people, it does not make it any less a crime; so what?

Mr. NEAL. I really think that you are being very flippant on that.

Mr. PUCCIO. No. Well——

[129] Mr. NEAL. If Senator Williams had disclosed his interest, do you think that the Government would have prosecuted?

Mr. **Puccio**. If he had disclosed his interest?

Mr. **Neal**. Yes.

Mr. **Puccio**. When?

Mr. **Neal**. When he allegedly got the interest, or if he had told Mr. Weinberg and had finally stood up and disclosed his interest, do you think you would have had a case?

Mr. **Puccio**. Well, it is very difficult to make a judgment. I would say that if you just changed that one factor, of course we would have a case.

Mr. **Neal**. Why was it that Mr. Weinberg repeatedly, on something like six or seven occasions, would insist to Senator Williams and to Senator Williams' colleagues that he would have to conceal his interest?

Mr. **Puccio**. I think what Weinberg was trying to do there was to employ a technique that insured that the deal was branded with illegality from beginning to end. In a legitimate business, you do not insist that someone do something wrong like that.

Mr. **Neal**. Well, he insisted on May 31, 1979, after Senator Williams says he is going to disclose his interest, Weinberg says he can put it in anybody else's name.

Mr. **Puccio**. Right.

Mr. **Neal**. On June 8, he tells Feinberg that Williams [130] must not put it in his name. Again, on June 8, he told Errichetti that he must pressure Feinberg not to allow the stock to be put in the Senator's name.

Mr. **Puccio**. Right.

Mr. **Neal**. On June 10, Weinberg stresses to Katz that the Senator's interest must be hidden. On June 11, Weinberg insists with Feinberg that the corporation must be set up so that outsiders who will want to buy will never be aware of Williams' hidden interest.

And I guess I could go on and on. On October 7, Weinberg and Amoroso tell Senator Williams that the Senator cannot declare his profit. Isn't that pushing a little too much——

Mr. **Puccio**. I think that probably fits under your clear and unambiguous safeguard. You are making it clear and unambiguous that this is a dirty, dirty, crooked deal. And if someone came to me with that proposition, if I had not known by then, bells would have gone off. It cannot be in your own name, it has got to be in somebody else's name, it has got to be hidden—I mean, that is almost like a red flag that this is a dirty deal. I think it is a safeguard.

Mr. **Neal**. When do you stop pushing a man in these circumstances?

Mr. **Puccio**. I am not aware that there was any real pushing in this case.

[131] Mr. **Neal**. Well, six or seven or eight times. They even talked about him as being dumb, et cetera, because he wanted to disclose his interest. Are you aware of that?

Mr. **Puccio**. There were 350 conversations in that case. They said at one point he was dumb?

Mr. **Neal**. Yes, because he want to disclose his interest.

Mr. **Puccio**. It seems to me this is the way that crooks talk. I mean, I do not know how else I can describe it to you. If you are dealing in the underworld, this is the way deals like that are discussed.

Mr. **Neal**. You do not have any problem with Mr. Weinberg's repeated insistence that Senator Williams not disclose his interest?

Mr. **Puccio**. No, I do not have any problem with that.

Mr. **Neal**. After the coaching session and after the repeated insistence that he conceal his interest, after the $12.6-million inducement, why was the Government still not satisfied with the Senator Williams matter?

Mr. **Puccio**. Who said we were not satisfied—by the way, I think satisfied may be the wrong term.

Mr. **Neal**. I mean assured of a case.

Mr. **Puccio**. Oh, we had a case at that point.

Mr. **Neal**. Why did you then pursue him with respect to the asylum scenario and seek to get him to take $40,000?

[132] Mr. **Puccio**. To make a better case.

Mr. **Neal**. To make a better case?

Mr. **Puccio**. The difference between maybe a trial and a plea of guilty.

Mr. **Neal**. When do you stop in something like this?

Mr. **Puccio**. When does a public official stop showing up at meetings to enter into these machinations? I do not know. When you say, "When does the Government stop," I think considering it was a very sensitive area, the investigation had a reasonable life. It did not go on for 5 years. I was almost unambitious in a sense.

Mr. **Neal**. On November 27, 1979, there is a document that says:

> Relative to the matter concerning U.S. Senator Harrison Williams of New Jersey, the following was decided: (1) It will be necessary to recontact Senator Williams in an attempt to obtain an overt action on his part regarding his sponsoring of some type of legislation, that is, tax cover for titanium mine, environmental standards for titanium mines, and/or import duties for titanium mines; (2) It was also suggested that attempts should be made to elicit from U.S. Senator Williams whether or not he wanted his shares hidden.

I mean, this is long after there are seven or eight efforts to try to get him to hide his share.

> If the above information is obtained, prosecutors at the meeting felt they could prove that Senator Williams was in [133] violation of title 18, section 201, U.S.C.

Did you consider continuing necessary to make the case, or is that simply unfortunate wording, "If the above information is obtained, prosecutors at the meeting felt they could prove that Senator Williams was guilty of an offense?"

Mr. **Puccio**. Uh-huh.

Mr. **Neal**. You already thought you could prove he was guilty of an offense?

Mr. **Puccio**. That is right.

Mr. **Neal**. And you kept after him about the $20,000 walking around money, and then the $40,000 to introduce immigration legislation, simply to make a better case?

Mr. **Puccio**. Right.

Mr. **Neal**. And that long course of pursuing him does not bother you at all?

Mr. **Puccio**. It does not bother me, no.

Mr. **Neal**. The only thing that bothers you is the coaching session—and he was reprimanded for that?

Mr. **Puccio**. He was reprimanded, and there were steps taken to make sure that was not done again. It bothered me in this sense, and I think I have testified, that it built in a possible entrapment argument. I did not for 1 minute believe—and it did not happen—that a U.S. Senator was going to walk into a meeting because Mel Weinberg told him to put on an act, and he was in fact going to put on an act. Things like [134] that just do not happen. And Senator Williams, when he testified, pointed out that things like that just do not happen. But as a matter of practice in an undercover operation, it was very bad practice.

Mr. NEAL. Let me ask you now about the gifts to Mr. Weinberg. Let me divert for just a moment. Do you have any doubt—are you fairly well-satisfied now, Mr. Puccio, that Mr. Weinberg did in fact receive those gifts from DiLorenzo on behalf of Errichetti?

Mr. PUCCIO. All I can say is there is evidence to suggest that he did. Whether he did or he did not receive the gifts is not something that I am going to pass judgment on.

Mr. NEAL. You had a conversation with him before he testified, didn't you, about what to do about the gifts?

Mr. PUCCIO. Uh-huh.

Mr. NEAL. What did you tell him?

Mr. PUCCIO. I told him if he got the gifts, he should admit it.

Mr. NEAL. You were even stronger than that, weren't you?

Mr. PUCCIO. Well, one uses techniques with people like Weinberg to try and get the most out of it that you can. My feeling was that the gift issue was a red herring issue. If in fact he got the gifts—it had nothing to do with the integrity of any of these cases—if he got the gifts, it was much more serious in my mind to go in and lie about it than to just admit [135] it.

Mr. NEAL. And you would at least agree, would you not, there is some considerable body of evidence in the files of the FBI that he, in fact, did take the gifts?

Mr. PUCCIO. We submitted a report to the judge on the entire matter, which can be made part of the record, and I think that sort of speaks for itself.

Mr. NEAL. What is your judgment about it?

Mr. PUCCIO. I do not really think that I should make a judgment at this point. There is evidence one way, and there is evidence the other way.

Mr. NEAL. The evidence the other way is that he said he did not, right? I agree with you; the gifts may not be a point except economically——

Mr. PUCCIO. There is no point in me coming to a conclusion now that Weinberg did or did not get the gifts. The evidence is there. You draw your own conclusions.

Mr. NEAL. Mr. Puccio, did you ever become concerned of the number of unrecorded and un-302'd contacts between Mr. Weinberg and the targets?

Mr. PUCCIO. By the way, just to follow up on that, I am not trying to fence with you on this gift issue. I think I——

Mr. NEAL. Well, I think you are, but that is all right.

Mr. PUCCIO. I think I should say to you that in light of the fact that these cases are to a certain extent still in [136] litigation, all I am doing by giving you opinions at this point is creating more litigation for the Justice Department. I think we are giving the defense lawyer an opportunity to say, "Well, Puccio now says——," whatever, and I just do not think that is fair to put us in that position. We are trying to answer these questions as best we can without fomenting litigation, let us say.

Mr. Neal. Well, I would agree with you, Mr. Puccio, that as far as him receiving gifts is concerned, it is not any big matter, except that he said he did not. And if he is not telling the truth about that, then you begin to wonder whether he is telling the truth or not when he says he did not meet with Errichetti and share the MacDonald bribe, or meet with Errichetti and share the Erichetti bribe. Do you see what I mean?

Mr. Puccio. It is a credibility matter. It is a credibility issue.

Mr. Neal. Right.

What about the unrecorded contacts between Mr. Weinberg and these parties? Did you ever—was that a part of your duties to determine during the course of this if Mr. Weinberg was meeting with these targets, meeting with the targets and not telling the Government so there would be a 302, or the Government was not writing a 302, and that there was no recording of these?

Mr. Puccio. I am sure you are aware that all the meetings [137] with Senator Williams were recorded. All the meetings with all the Congressmen were recorded. I think with the exception of Errichetti—correct me if I am wrong—after a while, they were meeting with Errichetti 8 hours, 10 hours at a time, every single day, and it was impossible to record and unwise to record everything that was said with Errichetti. Errichetti certainly had free access to Weinberg, and vice versa, and I think we were successful in controlling the situation. But it was impossible to record everything between them.

But the important thing is that the public officials' conversations were recorded, and I think that the videotapes and the audiotapes really speak for themselves on what happened vis-a-vis the public officials and the undercover people.

Mr. Neal. One of the things that this committee is looking into is the control of these cooperating individuals with undercover agents. My question to you is, Did there come a time during the course of the Abscam operation when you became concerned that there were, in the words of a document in the files of the Department of Justice, not written by Mr. Plaza: "There are countless unrecorded conversations in this case," and refers on down to many of them between Mr. Weinberg and targets, including Mr. Errichetti. Did that come to your attention during the course of the investigation?

Mr. Puccio. By the way—this may be a small point, but I assume that these unidentified public officials who write all [138] these documents somehow emanate from New Jersey. Will we at least agree on that?

Mr. Neal. No; we will not agree on that. No, we will not agree on that. The one I am reading from does not emanate from New Jersey.

Mr. Puccio. OK. Can you give me the question again?

Mr. Neal. Yes; I will, again. One of the things we are concerned with here, and one of the things the Senate resolution directs this committee to study, is the care and control and feeding, I guess you would say, of the people who conduct undercover operations, that is, including the Weinbergs.

Mr. Puccio. A significant issue, I agree.

Mr. Neal. It is a significant issue, isn't it?

Mr. Puccio. Yes; certainly.

Mr. Neal. And as a matter of fact, at least the Department of Justice has recognized and conducted a study. One of the things that study points out is that one of the mistakes made in Abscam was the failure to record or otherwise memorialize these contacts; isn't that correct?

Mr. Puccio. I have not seen the results of the study.

Mr. Neal. Did there come a time in the course of this investigation when you learned that Mr. Weinberg was meeting these targets, and there was no memoralization of what occurred?

Mr. Puccio. Not really.

Mr. Neal. Not really?

[139] Mr. Puccio. No. I did not become—other than Errichetti. And I sympathized with the agents on Errichetti. It was impossible to cover. They would go to Cherry Hill for 3 or 4 days at a time, and have breakfast, lunch, and dinner with Angelo Errichetti. They had hundreds of hours of tape of Errichetti already. The fact that they were not recording everything with Errichetti was something that, as I said, I sympathized with them. There was no way of doing it. In fact, what they would do, when he would say something, if they would be out really late, or did not record something——

Mr. Neal. Mr. Puccio, I grant you, you cannot record every one, but let me give you one example, just one example. Weinberg met with Errichetti on March 30, 1979, the night before the bribe was allegedly to be made to Mr. MacDonald. That meeting was arranged by the FBI. It went on for 4½ hours. There was no recording and no debriefing in a 302 of Mr. Weinberg of that meeting. That is not a meeting out in Cherry Hill. That is a meeting arranged by the FBI.

Mr. Puccio. Well, your first question was general, and I gave you a general answer, which I think is an accurate one. Now you are being very specific about this one meeting.

Mr. Neal. Well, only because you went to some specifics. My question to you was——

Mr. Puccio. I was not aware, OK—my understanding—you are talking about the day before the MacDonald payoff, right——

[140] Mr. Neal. Yes.

Mr. Puccio. All right. My understanding of the meeting—I gained this understanding at the time, on the day that it happened—of the meeting between Errichetti and Weinberg on that day was this. I was told by the Bureau that Weinberg was coming in from Florida. It was the day before a payoff. Erricheti was picking him up at the airport, I think was what I was told. There was not going to be a recording. There was a little bit of concern right before the payoff that Errichetti—it was a big payoff—might become nervous and somehow, the operation would be disclosed. And my understanding was that this was not a substantive meeting, you know, that Errichetti was picking him up and taking him to his hotel——

Mr. **Neal.** Not a substantive meeting. It was a meeting, quote, "to smooth things over," for the payoff to MacDonald the next day.

Mr. **Puccio.** That is not my understanding of it.

Mr. **Neal.** I think that is Mr. Good's understanding.

Mr. **Puccio.** Well, it could be, but my understanding was that he was going to pick him up and take him to the hotel, and the next day there was going to be a meeting.

Mr. **Neal.** Let me go ahead with my original question. Did there come a time——

Mr. **Puccio.** It could be that I was told what else you indicate—that I was told it was to smooth thing over; I do [141] not recall. But it would not have made any difference to me. There is no question that these two guys could have had access to one another, all right? So he recorded it, and if he wanted to do something, we are always alert to the fact, and somebody who has been around as long as John Good, who was in charge of this operation, is certainly alert to the fact that an informant can be a doubledealer. You do the best you can.

Sure, maybe that could have been recorded, and then Errichetti could have met with Weinberg an hour later, or vice versa, and discussed something that we were not aware of, or a 302 could have been made up——

Mr. **Neal.** My question to you is not what could have been. Did there come a time during the course of the Abscam operation when you became concerned that there were contacts, in the words of a prosecutor not from New Jersey, "countless numbers of unrecorded contacts with the targets in this case." Did there come a time during the course of the investigation that you became aware of that?

Mr. **Puccio.** That there were a lot of contacts?

Mr. **Neal.** Yes.

Mr. **Puccio.** No.

Mr. **Neal.** Unrecorded.

Mr. **Puccio.** No.

Mr. **Neal.** Not at any time during the course of the [142] investigation?

Mr. **Puccio.** Well, I became aware of the fact that there were certain meetings with Errichetti where there was not a recording, and I was satisfied that the reason was that it was not really possible or feasible that there could be a recording of every meeting with Errichetti. I was not dissatisfied with the amount, the quantity, of paper and tape in this case. There were some thousand tapes. I also considered this the kind of field decision that an agent could make. Sure, we advised them, "Do you want an airtight case? Tape everything." You cannot always do that.

Mr. **Neal.** I understand. Your answer, then, is that if you became aware that there were a number of contacts unrecorded and un-302'd, if I may use that expression——

Mr. **Puccio.** The 302 is a different thing. That does not impress me one way or the other.

Mr. **Neal.** It does not impress you that there is a guideline in the files of the Department of Justice saying you should make a 302 of every material conversation?

Mr. PUCCIO. When you can, but a 302 is an agent's note, in effect is what it is.

Mr. NEAL. Your answer, then, is that at no time during the course of Abscam, during the course of the covert stage, did you become concerned about that file?

Mr. PUCCIO. No. To the extent that the problem was [143] discussed, I was satisfied that the answers I was given by the Bureau covered the matter, and I am satisfied until today.

Mr. NEAL. Did you ever become concerned during the course of the covert stage of Abscam that there was inadequate supervision of informant Weinberg?

Mr. PUCCIO. No. I thought there was good supervision of informant Weinberg.

Mr. NEAL. You would not agree with this statement——

Mr. PUCCIO. Within the limits of feasibility. I mean, nobody was living with him 24 hours a day.

Mr. NEAL. Would you agree with this—you would not agree, then, with this statement from a prosecutor—not a New Jersey prosecutor—"We are also concerned particularly about the supervision of informant Weinberg in this case." That is not a New Jersey prosecutor.

Mr. PUCCIO. "We are not" what?

Mr. NEAL. "We are also concerned particularly about the supervision of informant Weinberg in this case. This subject has dominated the due process hearings in the Jenrette trial, wherein the judge expressed dismay that Weinberg was allowed to contact targets outside the presence of FBI agents. In this case, Weinberg suggested improper deals to Errichetti. He may have also been too involved in the production of phony CD's by Rosenberg and Errichetti." I just read that to be complete. You would not agree, then, that there was concern [144] about the supervision of Weinberg in this undercover operation?

Mr. PUCCIO. Was I concerned?

Mr. NEAL. Yes. Were you concerned?

Mr. PUCCIO. I thought that Weinberg was being properly supervised. By the way, it is of no real help to quote from a document whose author is a mystery, because it could have been written by somebody who arrived at the Department of Justice the day before he wrote the memo and had never had any practical experience. It could have been written by the best lawyer in the whole Department. And I think it is true, perhaps some people around here would tell you that what one Senator says about an issue probably carries much more weight than what another Senator says about the same issue. So I would have to know who the author of the document is before I would give any credence to any conclusory statement.

Mr. NEAL. You understand that it is not my decision——

Mr. PUCCIO. I did not write that document, Mr. Neal, did I?

Mr. NEAL. No.

Mr. PUCCIO. OK. Thank you.

Mr. NEAL. You understand that I would very much like to disclose to you the author of the article, but that I am prohibited from doing so by the Department of Justice?

Mr. PUCCIO. Well, maybe you can just give me a little peek during the recess.

[145] Mr. NEAL. Well, I will give you a peek. I will tell you what I will do. Could we have this handed to the witness. You are not to disclose the name. [Handing document to Mr. Puccio.]

Mr. PUCCIO. [Perusing document.]

Mr. NEAL. You asked for the writer of the document. I cannot take the Senators' time to allow you to read 40 pages. If you have any questions after the recess that I have read it accurately, I will be able to show it to you.

Mr. PUCCIO. I am not going to read it. I have seen this document before.

Mr. NEAL. OK. That is not a newcomer as a prosecutor, is it?

Mr. PUCCIO. Let us say a relative newcomer.

Mr. NEAL. OK. The fourth safeguard we were talking about, Mr. Puccio, is the statement that you could rely on these middlemen to bring in only the corrupt, because that would be in their self-interest. I read you that this morning, didn't I?

Mr. PUCCIO. That was a statement that was made by Assistant Attorney General Heymann, that you can rely on the middlemen only to bring in people who are corrupt because it is in their self-interest?

Mr. NEAL. Right.

Mr. PUCCIO. I suppose that is true—well, in one case I can think of, the person brought in was not corrupt. So it is [146] not a foolproof standard.

Mr. NEAL. OK. Let us take them one by one. Let us take Mr. Errichetti. He brought you in a State official—you know the one I am talking about——

Mr. PUCCIO. Right.

Mr. NEAL [continuing]. And he told you—and I have got the documents—he told the FBI that this man was aware of what was going on, and would take a bribe for selling his office.

Mr. PUCCIO. Right.

Mr. NEAL. The man came in, and on the tape, Mr. Errichetti admitted that he had, in fact, not briefed him in advance. Are you familiar with the name I am talking about?

Mr. PUCCIO. We are not talking about somebody whose name we have mentioned several times here, are we?

Mr. NEAL. No, we are not.

Mr. PUCCIO. Right. You are talking about a meeting that took place the end of June 1979?

Mr. NEAL. Yes, sir, I am. Are you familiar with that?

Mr. PUCCIO. I am familiar with that case, yes.

Mr. NEAL. Well, whether or not you agree, I understand you think an offense was committed, although you agree there is not going to be any prosecution on it.

Mr. PUCCIO. Well, I do not know. I certainly think an offense was committed, and the statute of limitations has not run.

[147] Mr. NEAL. You do agree that Mr. Errichetti, although telling the FBI that he had briefed this man—or, telling the FBI that this man would come in, would guarantee to sell his office for $50,000, and that when he came in, Mr. Errichetti then admitted he had not briefed the man at all; do you agree with that?

Mr. PUCCIO. No, that is not what happened. I mean, that tape, which runs for an hour and a half, if you view it, I think will exhibit to you that there is a case there that the fellow clearly knew what he was there for, made certain representations, and unhappily—or happily, from his standpoint—was not paid. It was a mistake. There was a breakdown in communication. There are a very complicated set of facts in terms of the violation. It was not a Federal official. And I think a mistake we made—understandably made—was not making the payoff. In my view, the person expected the payoff as a result of that meeting, and was diappointed when he did not get it.

Mr. NEAL. I have a document here that Mr. Errichetti stated that this man would accept a payoff of $50,000 in return for guaranteeing that certain things would be done, and that the FBI approved the offer of a bribe based on Mr. Errichetti's guarantee. The next document I have is a document reporting the results of that meeting, which says, "During the discussion, Errichetti mentioned that he had not briefed this [148] official beforehand."

Mr. PUCCIO. That is just not so. It was obvious that he briefed him.

Mr. NEAL. Are you meaning that the document that I have here that says that is not so?

Mr. PUCCIO. I am saying to you that the tape is the real evidence of what happened, and not this document—what document are you referring to?

Mr. NEAL. I am referring to a document in the files of the FBI, reporting on the results of this meeting, which says, and I quote: "During the discussion, Errichetti mentioned that he had not briefed official beforehand." End of quote.

Mr. PUCCIO. Well, that is just not so. Why don't you look at the tape? Was that report written by someone who even saw the videotape?

Mr. NEAL. It was written under the auspices of Mr. John Good.

Mr. PUCCIO. "Under the auspices"—what does that mean? The tape is the primary evidence of what happened here.

Mr. NEAL. That did not bother you at all about Mr. Errichetti?

Mr. PUCCIO. Bother me? What bothered me is we did not make the payoff.

Mr. NEAL. I see. All right. Do you remember the "Noto" incident?

[149] Mr. PUCCIO. Noto? Mario Noto? Nopo, Mopo, whatever it was.

Mr. NEAL. Right, Mopo, whatever it is.

Mr. PUCCIO. Yes, sure, I remember that.

Mr. NEAL. Mr. Errichetti was going to bring you an Immigration and Naturalization official who was going to accept a bribe, and he brings you an imposter.

Mr. PUCCIO. Right.

Mr. NEAL. Does that bother you about Mr. Errichetti's reliability?

Mr. PUCCIO. Well, it only illustrated what we already knew, that he was a big crook.

Mr. **Neal**. Does it bother you about Mr. Errichetti's reliability, that he is going to bring in only the corrupt because that is in his self-interest, that safeguard we talked about—does that bother you?

Mr. **Puccio**. I was a little bit surprised at Angelo Errichetti, based on that, in light of what he had produced in the past, which was quite good.

But it only goes to show—it only reinforced our belief that he was a crooked fellow.

Mr. **Neal**. Yes. But what did it do with your willingness to rely on him under this safeguard that the middlemen only bring in the corrupt and that you can rely on that?

Mr. **Puccio**. He did bring in the corrupt. He brought in a [150] corrupt fellow, who was looking to get paid for pretending that he was from the Immigration Service.

Mr. **Neal**. Did that incident bother you at all as to whether you should go ahead and rely on Mr. Errichetti in the future or not——

Mr. **Puccio**. It did not——

Mr. **Neal**. Let me finish my question, please.

Mr. **Puccio**. OK.

Mr. **Neal**. Did that bother you at all about whether you should rely on this particular safeguard in respect to Mr. Errichetti thereafter?

Mr. **Puccio**. It revealed to me how unlikely it was that Mr. Errichetti would bring in an innocent person. It did not set off an alarm bell in my mind that Errichetti was going to bring in some poor, innocent dupe. He brought in a partner in crime, in effect, who tried to participate in a ripoff, which was foiled by the FBI because it had a picture of what the Immigration official looked like.

By the way, we did not deal with Errichetti after that, you know—understandably so—he tried to take us for $50,000.

Mr. **Neal**. You did not? [Perusing documents.]

Senator **Mathias**. Mr. Neal, while you review your notes, the committee will take a 10-minute recess.

[Short recess.]

Senator **Mathias**. The committee will come to order.

[151] Mr. Neal, will you resume your questioning?

Mr. **Neal**. Mr. Puccio, you said that whatever your view was of the Noto incident, you decided not to use Errichetti thereafter?

Mr. **Puccio**. We just did not use him. It was so traumatic insofar as our relationship with him was concerned that it was impossible to use him.

Mr. **Neal**. You did not use him because he abandoned you, not because you abandoned him; isn't that correct?

Mr. **Puccio**. It was sort of mutual, and we had Criden at that time, who filled the gap, so to speak.

Mr. **Neal**. As a matter of fact, there is a document in the file—that "Noto" incident was in September——

Mr. **Puccio**. September 19, 1979.

Mr. **Neal**. September 19?

Mr. **Puccio**. Uh-huh.

Mr. **Neal**. I have a document from the files of the Department of Justice, dated October 2, 1979, that says, "Make sure that UCA"—that is "undercover agent", right——

Mr. Puccio. Right.

Mr. Neal [continuing]. "Does not solicit Congressmen/Senators and will approve further payments only if brought to UCA's by Criden/Errichetti." So, as far as the FBI is concerned, they were not giving up on Errichetti, even after the Noto incident? Putting your hands out does not do anything for the [152] record, Mr. Puccio.

Mr. Puccio. OK. The answer may do less, but I will give it to you anyway.

Mr. Neal. All right, well, let us try the answer; try to verbalize it.

Mr. Puccio. OK. I think that that was a small blemish on Errichetti's record, compared to what he had done in the past.

Mr. Neal. A small blemish?

Mr. Puccio. A small blemish. He had produced MacDonald, Senator Williams, Myers, Lederer, and others, OK? I do not think that—it is something that made us very wary of him, and it was appropriate to dress him down. It would have been inexplicable if we did not dress him down, have Weinberg call him and bawl him out.

Mr. Neal. Did Weinberg dress him down?

Mr. Puccio. Yes.

Mr. Neal. I have seen a tape that says, "Oh, come on, Errichetti. You did it, and let us go on to better things."

Mr. Puccio. Right.

Mr. Neal. Do you remember that tape?

Mr. Puccio. Right. They were sort of——

Mr. Neal. Was that a dressing down?

Mr. Puccio. He complained a little bit——

Mr. Neal. There is that kind of tape, just as I described; [153] isn't there?

Mr. Puccio. I would have to listen to it. I know they end up sort of chummy and calling each other "men of integrity" and things like that, but it is an interesting——

Mr. Neal. Slapping each other on the back, just like little boys, they were.

Mr. Puccio. Right. It is an interesting tape.

Mr. Neal. Yes, and saying, "Oh, forget it, Angelo."

Mr. Puccio. Right, "We are pals, we are pals."

Mr. Neal. And, "Let us go on to better things."

Mr. Puccio. I remember that. But it never happened. It never happened.

Mr. Neal. Apparently, because Mr. Errichetti decided that Mr. Weinberg was not a man of integrity; is that right?

Mr. Puccio. Well, I do not know, I do not know, it could be.

Mr. Neal. Let me go to one, last area that I wanted to talk about and then I am going to leave it for others to go into, if they wish, into the specific authorizations, because we have covered that with some others.

But just to make the record clear on the approval documents, in the approval documents we see, there is an Air-Tel from Brooklyn-Queens to the Director, saying that Congressman X or Congressman Y will take a bribe, that Errichetti or Criden or Silvestri guarantee that Congressman X will take a bribe for [154] $50,000 or whatever, and will sell his office. And then, there is a "Puccio concurs, provided the proper commitments are made."

Mr. PUCCIO. I saw these documents subsequent to all of this.

Mr. NEAL. Is that basically correct? That is the request for approval.

Mr. PUCCIO. Maybe there might be a little bit more detail on that. But essentially——

Mr. NEAL. Much more detail, but I am trying to get the operative words.

Mr. PUCCIO. Essentially, a middleman has contacted the undercover people, has stated that so-and-so would be willing to make these representations and take the money; Puccio is contacted and concurs in holding the meeting and offering the money if all those conditions are met, whatever. That is, in outline form, what those authorizations would say.

Mr. NEAL. OK. Your concurrence, as I understand your testimony a while ago—and I believe you gave the reasons for it—if a corrupt middleman says that any Senator, any Congressman—we can name them A through 435, or B through 100—any of them, if a corrupt middleman says Senator Blank or Congressman Blank will take a bribe and sell his office, you would say, "Bring him in?"

Mr. PUCCIO. Right.

[155] Mr. NEAL. And you would say that, I gather, without any checking, other than looking at the Congressional Directory?

Mr. PUCCIO. Well, as a matter of procedure, there was a quick check made by Mike Wilson at headquarters, to see if there is any other pending investigation that we might interfere with.

Mr. NEAL. But if you found nothing one way or another——

Mr. PUCCIO. We would have to go ahead, yes.

Mr. NEAL [continuing]. You would say, "Bring him in?"

Mr. PUCCIO. Right.

Mr. NEAL. Now, then, if you found something good in there—not John Good, but good—let us say that he has in the past reported a bribe offer to him, and that is reported, what would you do on that as a matter of policy? What would Tom Puccio do?

Mr. PUCCIO. The same thing. I do not think that——

Mr. NEAL. Bring him in?

Mr. PUCCIO. I suppose it might attract some attention. He had reported a bribe offer, and I suppose the circumstances would then become somewhat relevant. It is a terrible analogy, but sometimes people eliminate the competition that way. That may be a terrible analogy here, but that would not be dispositive.

Mr. NEAL. You would say, "Bring him in?"

Mr. PUCCIO. Yes.

[156] Mr. NEAL. Even though there was something good in that, right?

Mr. PUCCIO. Yes.

Mr. NEAL. OK. Now, you said in your judgment, when we talked about the standard on clear and unambiguous, make the criminality clear and unambiguous——

Mr. PUCCIO. Right.

Mr. NEAL [continuing]. You said that in your judgment, the Murphy tape—and I am not talking about what happens afterward at a trial, or something else—but you said in your judgment, in the Murphy tape, the illegality was clear and unambiguous.

Mr. PUCCIO. Right.

Mr. NEAL. Let me read you a document from the files of the prosecutor, referring to that specific Murphy transaction:

> The fact that we have recently been informed that we cannot review the latest tape with a New York suspect because it does not concern New Jersey does little to assuage our apprehensions in this regard and is indicative of the atmosphere which continues to dominate this operation. You—

Now, the writer there is referring to——

Mr. PUCCIO. You do not have to tell me who the writer is in that one. I can tell the style.

Mr. NEAL. The writer, when he says, "you," who do you think it is?

Mr. PUCCIO. Bob Stewart.

[157] Mr. NEAL. When the writer says, "you," he is referring to the addressee, David Margolis. Will you let me finish?

Mr. PUCCIO. Sure.

Mr. NEAL [continuing].

> You, of course, stated last night that you had reviewed the tape of that meeting and were hardly comfortable with what you saw.

Is the writer there saying that Mr. Margolis had a different view of the clear and unambiguous nature of that than you would have? He seems to; doesn't he?

Mr. PUCCIO. You would have to ask him.

Mr. NEAL. That is what he seems to be saying; isn't it?

Mr. PUCCIO. Uh-huh. Well, sometimes, reasonable people can differ. My view was that it was clear and unambiguous.

Mr. NEAL. Well, one thing we have learned about you, Mr. Puccio, is that you do not have much doubt.

Mr. PUCCIO. On certain things, I do not.

Mr. NEAL. Now, let me ask you one other thing, and then I will leave you. This fellow, DiLorenzo, was interviewed on June 6, 1980. He made two different sets of allegations. He said that he had purchased gifts for Mr. Weinberg—the microwave and the Sonys, et cetera—at the direction of Mr. Errichetti and had given them to Mr. Weinberg. Am I correct on that?

Mr. PUCCIO. Uh-huh.

Mr. NEAL. And you and I have already gone over what we both think about that and the accuracy of that allegation.

[158] Mr. PUCCIO. Right.

Mr. NEAL. He also said that after the January 20, 1979, bribe to Errichetti, he had delivered an envelope from Errichetti to Mel Weinberg, the same day, but after that bribe. He also said that on April 1, 1979, the day after the alleged bribe to MacDonald, he had driven Errichetti from Camden, N.J., up to Long Island, where Errichetti transferred to Weinberg a briefcase. Are you familiar with that allegation?

Mr. PUCCIO. Right.

Mr. NEAL. In the files of the Department of Justice, there is a document that says that DiLorenzo is obviously not telling the truth about the April 1, 1979, meeting, because at or around the time that that meeting allegedly took place in Long Island, Weinberg was calling Errichetti from Long Island to Camden, N.J.; right?

Mr. PUCCIO. Right, and that is the disputed call.

Mr. NEAL. Right. And that same document says, "Look, here is a tape and a transcript of Weinberg calling Errichetti, starting out, 'It is now 2:30 p.m., April 1, 1979' "—are you familiar with that?

Mr. PUCCIO. Right.

Mr. NEAL. And listening to the tape or reading the transcript, one would think that call was actually made at 2:30; wouldn't one?

Mr. PUCCIO. Right.

[159] Mr. NEAL. And the writer of that document I was talking about uses that as a means of refuting DiLorenzo's contention.

Mr. PUCCIO. I do not know. I am not familiar with the document you are talking about.

Mr. NEAL. Well, the document is a document saying that DiLorenzo is wrong because there could not be any meeting between Errichetti and Weinberg in Long Island and Errichetti giving Weinberg a briefcase the day after the MacDonald bribe, because Weinberg was calling Errichetti at 2:30.

Mr. PUCCIO. Right.

Mr. NEAL. OK. Now, it later turns out that there was no call made at 2:30; isn't that correct?

Mr. PUCCIO. Right. I think that is right.

Mr. NEAL. It later turns out that this is the only telephone call, or only recording ever made by Weinberg when he put a preface of the time; isn't that correct?

Mr. PUCCIO. That is right.

Mr. NEAL. And it later turns out that on analysis, Weinberg, after putting the preamble on this conversation, "It is now 2:30 p.m., April 1, 1979," turns the recorder off; isn't that correct?

Mr. PUCCIO. My recollection is that that is so, yes.

Mr. NEAL. And in fact, the call was not made until around 5 p.m.; isn't that correct?

Mr. PUCCIO. Uh-huh.

[160] Mr. NEAL. And there is another document in the files of the Department of Justice, saying that there is substantial evidence that Mel Weinberg phonied that record.

Mr. PUCCIO. That is someone's opinion.

Mr. NEAL. Yes.

Mr. PUCCIO. Uh-huh.

Mr. NEAL. A prosecutor not from New Jersey.

Mr. PUCCIO. Uh-huh—the same prosecutor who wrote the memo that you showed me before.

Mr. NEAL. Why would Mr. Weinberg phony that document, would you say?

Mr. PUCCIO. Are you looking for an opinion? Do you want me to look at this as an historian? I do not know. One could argue——

Mr. NEAL. Well, in your experience as a prosecutor, one could view this as a false exculpatory statement; isn't it?

Mr. PUCCIO. One could view it that way.

Mr. NEAL. One could view that as establishing an alibi in case somebody alleged he was getting a briefcase from Errichetti in Long Island, couldn't one?

Mr. PUCCIO. Sure.

Mr. **Neal**. If Mr. Weinberg phonied that telephone call, or that record, to make it appear that he was calling, would he have any other reason to do that, other than to establish an alibi?

[161] Mr. **Puccio**. I really do not know.

Mr. **Neal**. If Mr. Weinberg shared in the MacDonald bribe, is it also possible that he shared in these other bribes?

Mr. **Puccio**. You are asking me to really speculate. On all of the cases involving the Congressmen, all of the money is accounted for. In the case involving Senator Williams, no actual money was passed. You are aking me to speculate on whether or not he shared in the bribes involving the casino case.

Mr. **Neal**. You say that all the money in the *Myers, Lederer, Thompson,* and *Murphy* cases is accounted for?

Mr. **Puccio**. Yes, right.

Mr. **Neal**. Accounted for by a great deal of it going to Errichetti.

Mr. **Puccio**. A portion of each one of those went to Errichetti. I do not think it is quite the amounts you mentioned before.

Mr. **Neal**. A portion of it went to Errichetti?

Mr. **Puccio**. Right.

Mr. **Neal**. You do not know what Errichetti did with it thereafter?

Mr. **Puccio**. No, I do not know what Errichetti did with it—spent some of it, I am sure.

Mr. **Neal**. Pardon me?

Mr. **Puccio**. Spent some of it, I am sure.

[162] Mr. **Neal**. Gave some of it to Mel Weinberg?

Mr. **Puccio**. I would doubt it.

Mr. **Neal**. Isn't it a fact that the Thompson money is not all accounted for and never has been?

Mr. **Puccio**. No. All of that money is accounted for. By the way, just to be clear, no one has ever made the allegation—Errichetti has certainly never made any of these allegations that he gave money to Weinberg. And anybody who has made these allegations—something which you might want to track down; I have not had the time to do it—has never alleged any of the money went back to Weinberg, other than on those two payments in January and March. So this is a new thing that you raise that I have never heard of.

Howard Criden detailed for us, on February 2, 1980, the divisions of money, and there was never any question of money going to anybody other then the people involved.

Mr. **Neal**. You are saying there has been no allegation that bribe money was shared with Weinberg other than the bribe to Errichetti and the bribe to MacDonald?

Mr. **Puccio**. Yes. And I do not even know who made that allegation. I know in all the cases that we prosecuted, and all the trials, not one defense attorney, not one defendent, ever made any of these allegations, so I have got to assume it did not happen. Errichetti certainly never made any of these allegations.

[163] Mr. **Neal**. Errichetti did not testify, did he?

Mr. **Puccio**. But he never made the allegation through his lawyer. It certainly seems to me it would help him somewhat in his defense, even after, even after conviction——

Mr. **Neal**. That he shared part of the bribe money? That would help him?

Mr. **Puccio**. After conviction, it would certainly help him.

Mr. **Neal**. As a matter of fact, Mr. MacDonald offered to take a lie detector test, a polygraph test, that he never got any bribes——

Mr. **Puccio**. So what?

Mr. **Neal** [continued]. And offered to take it under the auspices of the Government, and he was refused.

Mr. **Puccio**. As you know, perhaps from direct experience, defendants offer to take polygraph tests all the time, and it is routinely refused, unless it is special circumstances.

Mr. **Neal**. My experience is that the Government gives them when they want to, and says they are really not worthwhile when they do not want to.

Mr. **Puccio**. My experience is——

Mr. **Neal**. Mr. Chairman, that is all I have.

Senator **Mathias**. Mr. Puccio, you made the statement that it was common knowledge that immigration bills were a source of some suspicion, and after some discussion, you said, "Well, you [164] might check with people in the House of Representatives."

Mr. **Puccio**. Right. My recollection is, Mr. Chairman, that at one point, I called the Department Office of Legislative Affairs and asked someone about what the procedure was in the House of Representatives, and I was told this was changed in 1976 as a result of the Helstoski problem.

At one time, the introduction of a private bill by any Member of the House of Representatives automatically stayed deportation, and this was viewed as an abuse, I was told. And the procedure was changed so that now, in the House of Representatives—and this is just one aspect of it, as I recall right now—the introduction of a bill does not stay deportation, but if a U.S. Senator introduces a bill, it does. But in the House of Representatives, it does not, and there has to be a report requested from the Department of Justice, and it goes before the House Judiciary Committee, where the chairman makes some kind of preliminary decision before any interference with the immigration law takes place.

Senator **Mathias**. Just as a matter of record, the introduction of a bill in the Senate no longer stays deportation either, but that really was not the point that I think we were driving at. I assumed from your statement that you were talking about common knowledge that you could buy a private immigration bill.

Mr. **Puccio**. Well, it was my sense in 1979—perhaps mostly [165] based upon the wide publicity the Helstoski matter had gotten in my area of the country—and what I had heard, and perhaps even in speaking to prosecutors, was that this was an area of some abuse. Now, I was never shown empirical evidence to establish that. That was my sense of it. That is part of the collective judgment I added to it. When Errichetti spoke about, and John Good conveyed to me what Errichetti was speaking about, that Congressmen were willing to take money to do this, it sort of hit pay dirt in my mind; it struck me as, well, this is the kind of thing I have heard of going on.

Now, I cannot be anymore precise than that. Maybe it was not going on at all, but I think what was important at the time was my state of mind on that—not legally important, but I think it answers your question.

Senator MATHIAS. What people in the House did you have in mind that we should check with?

Mr. PUCCIO. Well, I think the Judiciary Committee's Subcommittee on Immigration would know about when the rules were changed in the House and why.

Senator MATHIAS. In testimony in March 1980, Mr. Heymann said, "There are only two ways in which any public official will become the subject of an undercover investigation: If he is the object of reliable, specific criminal allegations for which an undercover operation is an appropriate method of investigation or, if by a process of self-selection, he [166] voluntarily enters an operation." That is Mr. Heymannn.

Now, Director Webster said this, "If we are running an undercover operation, and a crook, totally unreliable, comes in and says a police captain wants to sell protection, he regularly sells protection to bars here, I think we ought to say, 'Bring him in'."

Now, those are two different philosophies, two different ways to run one of these operations. Which one do you think is the right one?

Mr. PUCCIO. Well, of course, legally, either one is within the law. As a matter of policy, I think you are wasting your time, really—you are taking a big chance that you are wasting your time and your money and your resources if you follow up allegations brought in by people who have not had any kind of proven reliability, in a sense. I am not saying that you have to have probable cause or some specific legal standard, but I think that if someone walked in off the street into an office and said, "I know someone who will take a bribe," and you know nothing about the person, that is an awfully tough decision to make. As a matter of policy, I think it would be difficult to spend the Government's resources in investigating something like that—you might. You very well might. You might have to probe and find out more and develop something before you undertook an investigation. But to set up a meeting based on that, I think that would [167] probably be somewhat unwise.

Senator MATHIAS. So what you are telling us is you come down on Mr. Heymann's formula.

Mr. PUCCIO. I do not know. I would have to read the whole—I am a great admirer of Director Webster—and Mr. Heymann, for that matter—and being a former circuit judge, I am sure he outrules me on this one. I do not know. I am not familiar that that is Director Webster. I have had many discussions with Judge Webster on the Abascam case and these matters, and I do not know that that completely reflects his views today.

Senator MATHIAS. Around here, we find ourselves torn between two sides, too, and we like the authors of both pieces of legislation. They are both nice guys, and we would like to be with them, but sooner or later, when the roll is called, we have to choose which way we are going to go.

Mr. PUCCIO. Right.

Senator MATHIAS. So what I am asking you is——

Mr. PUCCIO. Based on my experience, I would go with the situation where you had more meat to it, more substance to the information.

Senator MATHIAS. Well, that is the Heymann formula, in which he says, "if the public official is an object of reliable, specific criminal allegations for which an undercover operation is appropriate."

[168] Mr. PUCCIO. Yes. I would lean strongly toward that view, really, because I think otherwise, you would be spinning your wheels a lot—not because I think there is any real constitutional issue here—there is not—but I think you would be spinning your wheels, and you would be wasting a lot of the Government's money on every one of these. There are a lot of crackpots out there, and people who make allegations which are worthless. I think that you are better off dealing with someone who has somewhat of a track record, and in small ways, it is usually easy to establish a track record.

Senator MATHIAS. Were the rules that were used in Abscam the same rules for which FBI agents would normally have been——

Mr. PUCCIO. The same rules.

Senator MATHIAS. Nothing different about Abscam?

Mr. PUCCIO. We had a case called Lilracs, another case called Modsound—these were all undercover FBI operations—and Abscam. The rules were the same in all of them.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. Puccio, I want to dwell just a moment again on this approval process, involving a substantial change in direction of an undercover operation already in progress, which I have dealt with with other witnesses and still have a little difficulty in pinning down just precisely how it occurred. My interest mainly is just to see how the mechanism works.

[169] As I understand it, the consensus among the witnesses seems to be that the first mention of this use of asylum involving Members of Congress occurred at a boat outing off of Florida and was suggested by agent Amoroso. There has been some suggestion in the testimony that perhaps it was discussed earlier by Weinberg and someone else, and this and that and the other. But somehow, you were into the process, as you have indicated already today. My question is, did agent Amoroso present this proposition to you prior to the July 26 boating incident; did you give him any advice or any direction or any encouragement toward moving in this direction prior to that particular outing?

Mr. PUCCIO. I have sort of gone both ways on that. I tend to think that he did not speak to me beforehand, but if he did, I would have said, "Fine. Give it a try." I mean, it would have been something that would have been thrown out. We were dealing——

Senator HUDDLESTON. Could you have said that and been authorized to have said that on the spur of the moment, without any further consideration by anyone in the FBI Headquarters or Justice?

Mr. PUCCIO. Right, yes.

Senator HUDDLESTON. You could have done that?

Mr. PUCCIO. Uh-huh.

Senator HUDDLESTON. And you do not recall whether it was [170] before or after. Well, I hope we will have the agent up here. I would like to know how this germ originated.

Mr. PUCCIO. Right. He has testified—if it would be of any help to you, he has testified maybe 5 or 6 times on how this germ originated.

Senator HUDDLESTON. Let me make this observation, then. The first day, when we went through step by step this approval process for changing directions, not for the initiating of an undercover operation—I think the approval process is in pretty good place there, and is followed pretty well—but I said the first day that I thought the approval process for changing directions was a charade.

Mr. PUCCIO. There is really no approval process for changing direction.

Senator HUDDLESTON. Yes, right. That is the conclusion I came to, and I am glad you agree with me on it, because after the second day, I recounted that statement a little bit and said maybe that was a little much of an overstatement, that it was not really a charade; it was just not really an approval process. Now, after listening to you, I am convinced it is a charade; there is no approval process, because you do not take into account anything that you are supposed to gather in the way of information as to whether or not you should proceed in this direction.

So I think you have answered the question. There is no [171] approval process, and none was, in fact, brought into play.

Mr. PUCCIO. Excuse me, Senator—other than the FBI coming to me and telling me the facts, and I will render an opinion, and then they go up the line in the Bureau.

Senator HUDDLESTON. And you said, like this, "OK, let her go"?

Mr. PUCCIO. That is right. And the Department would be notified by me, the people in Washington, but there was no new contract or something.

Senator HUDDLESTON. In fact, it is a little bit important as to whether or not you even discussed this with Amoroso before or after the boat meeting, because I contend—and I think the way the whole operation worked was—that the whole change of direction occurred at that moment that Amoroso made the suggestion on the boat, because then it went out of the hands of the FBI and the Agency, and went out of your hands, in fact, and into the hands of the Errichettis and the other undercover and corrupt middlemen.

Mr. PUCCIO. But we still had control. We had to pay the money. I mean, we could have said we did not want to pay the money, so in that sense, we controlled the thing throughout.

Senator HUDDLESTON. But it was in fact launched in that direction at that point?

Mr. PUCCIO. Yes.

Senator HUDDLESTON. Now, I am a little bit surprised at [172] your cavalier attitude, I guess, is the most charitable way I can mention it, but the indication I get is that you have no interest at all in the FBI's standards as far as dealing with targets or individuals. I assume you would be interested to the point that you do not want anybody's constitutional rights violated to the extent that you could not take it to court—you would be thrown out, obviously—but you indicated that you were not concerned, or you were not interested in the guidelines and what John Good was operating under, in the instructions that came from the FBI Director himself, that this was of no consequence to you——

Mr. Puccio. Right.

Senator Huddleston [continuing]. And that the manner in which they actually carried out the thing was of no consequence to you——

Mr. Puccio. Well, Senator, I spoke to Director Webster periodically, and I speak to people in the Department. I was never really made privy to these instructions that went up and down the line in the Bureau. They were not really that important, because we were dealing with a legal situation.

Senator Huddleston. Aren't you in essence the lawyer for the FBI?

Mr. Puccio. That is right.

Senator Huddleston. You are their lawyer.

Mr. Puccio. That is right.

Senator Huddleston. You represent them in court——

[173] Mr. Puccio. That is right, and I think that I was giving them a legal opinion as we went along, and I know that they have their own legal section that does provide advice, but our advice really is controlling, because we ultimately prosecute the cases.

Now, I think you have pointed out there probably is a duplication of effort, in a sense. For instance, in the wiretap field, our lawyers would prepare wiretap applications, and we would send them over to the Department. At the same time, it would go through the Bureau and the Bureau's legal counsel would look at it.

Senator Huddleston. It seems strange to me. It is almost backward. I am sorry that some of the actions I have taken in the past in trying to develop controls over the operations of the FBI and the CIA and others, we always wanted to rely on the Attorney General and the Justice Department. And now, you are telling me that you do not care what their operational procedures are. It seems to me that they are trying to impose on you some kind of reasonable standards, instead of you imposing them on them.

Mr. Puccio. We care about what substantively was done or what is going to be done.

Senator Huddleston. Because you care about what goes to court, and whether or not you can comply with the constitutional requirements.

[174] Mr. Puccio. That is precisely correct.

Senator Huddleston. Well, do you have any concern at all in your undercover operations that maybe you ought to have some additional requirements that go beyond the constitutional requirements?

Mr. Puccio. I think we did; I think we did.

Senator Huddleston. Are you concerned at all about the innocent third parties; about the reputations and that sort of thing?

Mr. Puccio. Right.

Senator Huddleston. Is that a legitimate concern?

Mr. Puccio. That is a legitimate concern, and that is something that any lawyer is sensitive to.

Senator Huddleston. Well, how did you express that concern?

Mr. PUCCIO. Well, one of the things we did was in Abscam, we only really dealt with reliable middlemen, people who had proven themselves, before we set up these meetings.

Senator HUDDLESTON. Not always reliable—reliable, a good percentage of the time, as Errichetti was, but not all the time, as counsel pointed out.

Mr. PUCCIO. But with Silvestri, as a result of the Pressler meeting, there was some——

Senator HUDDLESTON. And Silvestri, who was not reliable any of the time, was he?

[175] Mr. PUCCIO. Well, he was extremely reliable for a while. He had produced people who——

Senator HUDDLESTON. So that is where you think the citizens' rights ought to be protected, is by reliable, corrupt middlemen? It seems to me like it is almost a contradiction in terms.

Mr. PUCCIO. You state it in such a way——

Senator HUDDLESTON. You want Errichetti and you want Silvestri to protect the rights and the liberties of the people of the United States and not the Puccios, the people who the President of the United States appoints into a position of trust, and not the Federal Bureau of Investigation or the Attorney General.

Mr. PUCCIO. The only way I can state it to you, Senator, is when I was with the Department, we made the judgment that undercover operations are necessary.

Senator HUDDLESTON. And we do not disagree with that. Nobody on this committee disagrees with that.

Mr. PUCCIO. OK. And we have also made the judgment—and I think Mr. Neal, based on his experience would agree with me on both of these points—that in order to have a successful undercover operation, you have to use people like Weinberg.

Senator HUDDLESTON. And I do not question that.

Mr. PUCCIO. And in the context of one of these operations, you have to do certain things which amount, in a [176] certain sense, to an intrusion. The question is, Is it too great a price to pay? I do not think it is, when we are talking about the possibility, the reasonable possibility, that there is corruption in the Federal Government. I do not think it is too great a price to pay to set up one of these meetings.

Senator HUDDLESTON. Well, is there too great a price to pay, in your judgment?

Mr. PUCCIO. No, I do not think it is too great a price——

Senator HUDDLESTON. Any price—not what we have seen occur—but what would you consider to be too great a price to pay—I mean, if you destroy one Senator's reputation; some people may lose large sums of money in an undercover operation, and have. Are any of these prices too high?

Mr. PUCCIO. Well, I think you do reach the point where you are paying too much of a price. I do not think we have reached it here. I do not think anybody's reputation has been destroyed other than people who have been found guilty, and, obviously, we can have very little sympathy for that, in that sense, and I do not think there is any great monetary damage done here.

Senator HUDDLESTON. Well, let me make this point. I am not really concerned about difficulties that a Member of Congress may have had. I think most of us are grown, and we accept certain risks when we assume public office, and particularly this office, and we ought to have enough sense [177] to know an illegal proposition when one is presented to us. I am really not concerned about—most of my questions, of course, have been dealing with this question of a Congressional involvement, but that is not where my concern is. And I know that in some undercover operations, and some we will look at, there have been innocent third parties who have been damaged, and I am just wondering how you set a price and whether or not there is really a price that ought to be considered to be too much.

Mr. PUCCIO. My reaction, my feeling about it, has been over the years that it is a judgment call in each individual case.

Senator HUDDLESTON. Yes.

Mr. PUCCIO. Certainly, you do not want to do anything that is going to seriously risk anybody's life or health.

Senator HUDDLESTON. But it does happen.

Mr. PUCCIO. It occasionally does happen. It was not the case in Abscam, but I am sure you will find cases where there is a possibility of this.

Senator HUDDLESTON. Mr. Puccio, do you believe that everybody is corruptible?

Mr. PUCCIO. No, I do not agree with that.

Senator HUDDLESTON. Do you believe every public official is corruptible?

Mr. PUCCIO. No.

[178] Senator HUDDLESTON. Do you believe it is the responsibility of the Government to find out who is and who is not corruptible?

Mr. PUCCIO. To a certain extent; when presented with that set of alternatives in a given investigation, yes.

Senator HUDDLESTON. Or, is it more of a responsibility to find out who has been corrupted?

Mr. PUCCIO. Well, I think it may be both.

Senator HUDDLESTON. You think there is a legitimate responsibility of law enforcement agencies to conduct a test of the virtue of citizens; is that it?

Mr. PUCCIO. I do not—as a matter of policy, I would not go that far. In other words, the example which has been brought up many times is, would you set up an operation directed at Congress, to determine whether there were corrupt people in Congress. That is a tough policy question. I do not know. That was not the case here, as you know.

Senator HUDDLESTON. Against Congress, or against anybody.

Mr. PUCCIO. Against any institution.

Senator HUDDLESTON. Take the choir of the Baptist Church. Should you decide whether or not you ought to find out whether any of them are there under false pretenses, and that they ought to be tested?

Mr. PUCCIO. Well, fortunately, I have never had to face [179] the decision as to whether or not to do that.

Senator HUDDLESTON. Have you ever had to face one that you turned down?

Mr. Puccio. Not anything that would resemble this context that it would make any sense for me to talk about.

Senator Huddleston. You have never rejected an undercover operation?

Mr. Puccio. Oh, I am sure we have rejected undercover operations, but nothing that would have any particular relevance to what we are talking about here.

Senator Huddleston. My time is up, Mr. Chairman.

Senator Mathias. Senator Rudman?

Senator Rudman. Thank you, Mr. Chairman.

Mr. Puccio, this morning, counsel brought to your attention item 9 of our resolution, and I will read it again. It simply says, "The activities and responsibilities of prosecutors in connection with the investigation and prosecution of cases arising out of such law enforcement and undercover activities." I believe you are familiar with that part of the resolution.

There are really two issues that we have been examining here for 4 days and continue to examine today. One goes to the guidelines, and the second goes to the control. And of course, those two issues are inextricably linked to the quality of the people that you rely on.

[180] One of the events that occurred in the Abscam which Mr. Plaza testified to—and although you and Mr. Plaza obviously have substantial disagreement, I am sure that you do not have disagreement as to some of the facts that existed—one of the things that he testified to was the Ellis matter in which Mr. Ellis evidently owned the Garden State Race Track, which had burned down, was seeking money to rebuild it, a perfectly legitimate reason. He was contacted by Weinberg, and Weinberg told him that, of course, Abdul Enterprises might be interested in bailing him out of his problem. Ellis meets with Mr. McCloud, who is the chairman of the board of Abdul, and within minutes, says that he has bribed Senator Williams in a race track matter and goes on to point out that Williams would be a very good man to have in the background of any race track deal, and so forth and so on.

It later turns out that that is totally false, and so you get into the question of why did this fellow walk into this meeting and out of the blue sky start to tell this story about corrupt politicians.

Then it turns out that there was a meeting that was not videotaped that took place between Weinberg and Ellis, and it turns out that in all likelihood, Ellis was told by Weinberg and possibly, Errichetti, as to the kind of a scenario that he would have to present to McCloud, that is, that McCloud was only interested in financial deals if politicians were involved.

[181] Is that a fair recollection of the events of that matter?

Mr. Puccio. I do not think it is. I think that there is no question that Weinberg made it clear to Ellis that what these people—namely, the Abdul Enterprise representatives—were interested in were crooked deals and perhaps, crooked politicians. We never got into a prosecution situation here, but Ellis was interviewed by Mr. Houlihan of the FBI, who was working for Mr. Plaza, and on page 3 of a statement which Mr. Neal has, Ellis said, and I quote, "Weinberg told him to indicate to McCloud that he knew a politician that he could talk to and he, Ellis, would also talk to other politicians. He said that Weinberg did not tell him to make up any stories or to indicate that he had paid off politicians in the past. He also stated that Weinberg did not tell him to bullshit McCloud. Ellis said that the statements made to McCloud concerning his association with politicians were factual."

Now, Ellis was interviewed, and this is what he said.

Senator RUDMAN. But he did not dispute the fact that it was indicated to him that these people were interested in deals in which politicians could get involved.

Mr. PUCCIO. Right. And he claims that what he said about these politicians was factual.

Senator RUDMAN. Don't you see the danger—I mean, you will agree, without of a lot of discussion with me, that Mel Weinberg is not a totally reliable individual. You will agree [182] with that?

Mr. PUCCIO. I suppose I would.

Senator RUDMAN. Well, his record, certainly—I will tell you that, looking at it from my law enforcement perspective, I would say he is not a totally reliable individual.

Mr. PUCCIO. No informant is totally reliable.

Senator RUDMAN. We cannot argue that. So obviously, you put him into that kind of a situation, and you do not really control what he says.

Now, who is he talking to? He is talking to a desperate man, a man who has had his business burn down, and he is making some suggestions as to this man finding $50 million from Arab interests to finance a racetrack.

Mr. PUCCIO. Right.

Senator RUDMAN. Don't you think that in the area of control by prospecuting attorneys, we have got to be very careful to draw restraints around how far people like this go——

Mr. PUCCIO. Absolutely.

Senator RUDMAN. And to maybe wire them, body wire them, so you can listen to what they do say? I mean, don't you think there is a danger here, because that is really what we are talking about?

Mr. PUCCIO. Right, I agree. There have been cases where prosecutors, or agents, have wired informants who have turned the wire off during meetings. I am sure Mr. Neal, in some of [183] the cases he has prosecuted, knows about it. In fact, it became a practice in some circles to tape a tape recorder's "Off" button so that an informant could not turn it off. I am sure, Senator, you are familiar with that.

Senator RUDMAN. I am familiar with that.

Mr. PUCCIO. The judgment that has to be made, though, on control is a tough one. You have to use these people. They are all to a certain extent unreliable. You have to exercise a certain amount of sound judgment to make sure that they do not wing things by you. Can they fool you? It is possible. But in a case like Abscam, with the extensive amount of electronic surveillance utilized, you had ways of verifying what was going on.

And whatever Weinberg could have done—and I do not want to speculate on that—maybe he did nothing, maybe he did a lot of things—nothing he ever did affected the integrity of any of these cases. And if you add to that the fact that you have to use somebody like Weinberg, I think we are going to have to live with the fact that people like Weinberg may do certain things, and they have to be watched. We have to be vigliant.

I do not know what else I could say about it beyond that.

Senator RUDMAN. I just want to follow that with one other question or comment, and I agree with your comment, Mr. Puccio, but I think you would have to agree that by putting [184] Weinberg in a position with such a desperate man, he obviously did what desperate men do. He overreacted. He walked into a meeting, within minutes, was talking about bribing a U.S. Senator that he probably did not even know.

Mr. PUCCIO. Well, it is tough to sort this out, because Ellis' position is that whatever he said was factual, at lease, according to this report.

In that type of situation, it really went no further than that. Ellis produced no public official. There was no transaction consummated. I suppose you run the risk that somebody like Weinberg is going to sort of gin something like this up every once in a while——

Senator RUDMAN. That is precisely the point, Mr. Puccio.

Mr. PUCCIO. OK, you may run that risk. But does that mean you should not use people like Weiberg? I say no, it does not mean that at all.

Senator RUDMAN. No. I do not think that anybody on the committee is suggesting that. I think that what we are really trying to grope at here in this hearing is to try to see whether or not there are any better controls, whether we have learned anything from this at all, because granted, you did not prosecute anyone, but I can see situations in which people's very reputations, their whole lives, can be ruined because of a tangential brush with this situation in which they [185] were completely innocent, because of uncontrolled Mel Weinbergs, or in the case of an actual case, Mr. Silvestri. That is the problem.

Mr. PUCCIO. It is sort of remote, though, it seems to me, that somebody would go in and make all sorts of admissions about being involved in corrupt situations.

Senator RUDMAN. Do you have that Ellis 302 in front of you, that you just read?

Mr. PUCCIO. Yes.

Senator RUDMAN. Is it not true, however that Ellis denied in that 302 that he had ever paid anyone a bribe?

Mr. PUCCIO. [Perusing document.]

Mr. NEAL. Is the witness referring to——

Mr. PUCCIO. I did not read the whole—it may be true, but he also——

Senator RUDMAN. Well, that has to be true. He recanted a statement he made on tape.

Well, before my time expires, I want to get to one other item. Again, I am relating to item No. 9. As one who has done some prosecuting and videotaping and other things, I was fascinated by the tape, and I have been waiting for 5 months to ask you this question—in fact, I almost called you one day, and then I decided I would wait until you got here. That is the tape of the Williams bribe offer. Was that at the Plaza Hotel?

[186] Mr. PUCCIO. Right.

Senator RUDMAN. Approximate date was——

Mr. PUCCIO. January 15, 1980.

Senator RUDMAN. As I watched that tape, what appeared to me to happen was that the offer of a bribe was made, and it was almost out of the mouth of the offeror when Senator Williams kind of went back and said, "No, no, no," and then all of a sudden, Amoroso walked in the room, the phone rang, and the video cut out——

Mr. PUCCIO. Right—something like that.

Senator RUDMAN. Where were you when that happened?

Mr. PUCCIO. As I testified two or three times before, I was in the other room.

Senator RUDMAN. Watching this.

Mr. PUCCIO. Right.

Senator RUDMAN. Did you give some orders at that point?

Mr. PUCCIO. No. We discussed—well, John Good was there, I was there. We discussed the questions to have the agent pose to Senator Williams. And Amoroso, I believe, was in the hall, in between the two rooms. He could not really even see what was going on.

Senator RUDMAN. Well, who ordered the tape cut off?

Mr. PUCCIO. Well, any time an agent is not—it is standard operating procedure that when an agent is not in the room, we no longer have consent to record anything, so [187] automatically, it has to be shut off. As soon as that agent left the room, we would have an illegal surveillance if the camera were kept on. So it was immediately cut off.

Senator RUDMAN. Correct. I understand that.

Mr. PUCCIO. That is done by the technician automatically, no matter what else is going on.

Senator RUDMAN. Why did Amoroso get up and leave so rapidly? I mean, it really was a rapid exit. It is like the fireball went off.

Mr. PUCCIO. Did Amoroso leave—which room?

Senator RUDMAN. Well, he went out of sight; whoever was there in the room.

Mr. PUCCIO. Well, in order to speak to John Good, the telephone being utilized was in the next room in the suite, so the "sheik" and Amoroso went into the next room; they did not actually leave. But since they were not in the same room as the Senator, the equipment was shut off.

Senator RUDMAN. Who placed the call that caused the phone to ring?

Mr. PUCCIO. John Good, I would assume.

Mr. GOOD. Senator, if I may clarify, Amoroso, if my recollection is correct, had been standing out in the hall while the sheik was carrying on the conversation with Senator Williams. I had actually left the adjoining room prior to that comment about the bribe being made to Senator Williams, [188] and I told Amoroso in the hallway to go in and tell the sheik that he would be receiving a call from somebody in the next room. I was unaware of the fact, when I left the room, that that was the point that the bribe offer was going to be made. I do not recall exactly now what comment we had to make to the sheik, but I had actually left the adjoining room prior to the moment that the bribe offer was brought up, to tell Amoroso to go in and tell the sheik that he was going to be getting a phone call. So it was just a coincidental thing.

Senator RUDMAN. Well, maybe, Mr. Good, I should ask you the question. Did it occur to you that maybe you should have just let that scene play itself out?

Mr. GOOD. Well, that is the point. I had left the adjoining room before that scene had actually started.

Senator RUDMAN. For what reason?

Mr. GOOD. To tell Amoroso to tell the sheik that there was a call coming for him.

Senator RUDMAN. And that call was from——

Mr. GOOD. It would have been from me, in the adjoining room.

Senator RUDMAN. For what purpose, again?

Mr. GOOD. I cannot exactly remember right now, but it was to ask him to do something in the way of——

Senator RUDMAN. Being more specific?

Mr. GOOD. Specific, or something like that.

[189] Senator RUDMAN. Mr. Puccio, you understand why I am asking the questions.

Mr. PUCCIO. I understand why you are asking the question.

Senator RUDMAN. It seems to me—and this may have been a horrible, tragic circumstance, and maybe it would not have amounted to anything in the final prosecution, although I have read some of the jurors' affidavits, and it just seems to me that exculpatory events that occur within the control of a prosecutor ought to be allowed to play themselves out. I think you would agree with that.

Mr. PUCCIO. Well, I think I understand the argument that defense counsel made, and which was rejected at the trial, but when you subject it to scrutiny, it really does not make much sense. Senator Williams said "No" to the money not once, but maybe five, six times.

Senator RUDMAN. Three times.

Mr. PUCCIO. OK. And then after the interruption, he again reaffirmed the fact that he was not interested in the money. At the trial, either I asked him or his lawyer asked him, "Well, Senator, if there was not an interruption, and you needed more time, or you wanted to say something else, what would you have added?" And he did not add anything.

So it sounds, or maybe even looks sort of bad, but if you subject it to scrutiny, it does not mean anything. I mean, he had the opportunity to say anything he wanted, and he [190] could have stayed there forever.

Senator RUDMAN. I have no idea what he would have said, and I will not speculate, and you do not want to speculate——

Mr. PUCCIO. No, I do not want to speculate either, but I asked him to state what he would have said, and he could not come up with something.

Mr. GOOD. The main point, Senator, I think, that I would like to make is that it was not a designed interruption. It was an accidental thing, and it came at an unfortunate time. But I was not aware that the scenario was going to go into that when I left the adjoining room.

Mr. PUCCIO. One of the problems with that situation is that the fellow who was used was very ill-informed about all the aspects of the operation. He made a couple of cameo appearances, if you will. The last time he appeared, he said nothing; he just sat in the room, on June 28, and Amoroso did all the talking. So we were not dealing with an experienced undercover agent who had real knowledge of the facts. What he really added to it was that he was an Arab. And if I recall, John and I discussed—the question was, before the money is offered, ask him to ask the Senator to be more specific. I certainly was not satisfied that we should offer any money until the Senator was more specific about what he would do, and if my recollection serves me correctly, that is when John left the room and communicated with Amoroso, who went in and [191] interrupted a meeting at a point that he did not even have knowledge of.

Senator RUDMAN. Well, my time is up.

Mr. PUCCIO. But it was explored at length at the trial.

Senator RUDMAN. As Mr. Good said, I just think it was unfortunate.

Senator MATHIAS. Thank you Senator Rudman.

Senator Inouye?

Senator INOUYE. Mr. Chairman, for reasons well-known to the members of the committee, I do not wish to question Mr. Puccio.

Senator MATHIAS. Mr. Puccio, continuing on the subject of the direction behind the scenes, what could you see in that adjoining room? Did you observe the events on a video screen——

Mr. PUCCIO. Right.

Senator MATHIAS. Or did you have some direct view?

Mr. PUCCIO. No. It was a monitor. There was an agent who acted as a technician. By the way, this was the only such meeting I attended during the entire course of Abscam. Some of the people in my office attended others. But there were two or three little television sets——

Senator MATHIAS. So it was not a one-way mirror or anything like that?

Mr. PUCCIO. No, nothing like that.

[192] Senator MATHIAS. So that you saw what happened on a video screen.

Mr. PUCCIO. Right.

Senator MATHIAS. Was that the case of other lawyers from your office, who personally——

Mr. PUCCIO. Yes, that is right, all on a video screen.

Senator MATHIAS. Would you say that that experience made them material witnesses to the facts?

Mr. PUCCIO. No.

Senator MATHIAS. Why not?

Mr. PUCCIO. The only—well, there were so many other people involved, I cannot see how they would be material. You had the direct testimony of the agents who were in the room with the public official; you had other FBI personnel who were operating the equipment. I suppose if something happened with a tape, and it got destroyed, we would call the FBI people who made the tape.

The thought did run through my mind at the time. We did not have attorneys there on all occasions. I do not know that I would be a strong advocate of that in the future. I think experienced Bureau personnel can run one of these things, and as I indicated before, the ultimate call was with the Bureau on these things. Our people were there to provide legal advice, but there never was a dispute. But John Good was really calling the shots, and ultimately, the undercover agent was calling the [193] shots.

Senator MATHIAS. The Code of Professional Responsibility suggests that a lawyer who is a material witness to the facts of a case should disqualify himself from any representation in that case; is that not so?

Mr. PUCCIO. Right. That does not apply here, but that argument bears out my point that these arguments keep on coming up. The argument was made in the *Williams* case by defense counsel and was rejected by the court. It clearly does not apply here in this type of situation.

Senator MATHIAS. I understand. I am thinking of whether the philosophy that lies behind that rule should apply.

Mr. PUCCIO. I do not really think so. You do not really make yourself a material witness—certainly, not material—if you were the only person who could testify to something—there were so many FBI personnel involved in all of these things, the testimony of an attorney would not have been that necessary. As I said, we did not always have attorneys there. Interesting to note that initially, defense counsel in their arguments about the attorneys being present, accused us of having attorneys there to manipulate what was going on, in their initial motion papers. Later on, when it was ascertained that in most cases where there were payoffs, attorneys were not present, the argument was raised that the defendant had a constitutional right to have a Justice Department lawyer in [194] the other room. So they had you, one way or the other.

Senator MATHIAS. Well, if you had had the ability to run it any way you wanted, how would you run it?

Mr. PUCCIO. I probably would not have the attorney in the other room, if I had to call it.

Senator MATHIAS. Why not?

Mr. PUCCIO. I do not think it violates any rule. I do not think there is any Code of Professional Responsibility problem. But the main reason I have is I do not think that attorneys are especially skilled at making these calls. I think the Bureau, Bureau personnel who have had undercover experience, are very skilled at making these field judgments.

Senator MATHIAS. It is a question of competence——

Mr. PUCCIO. Yes, it is a question of competence. And I think an FBI agent can be—they are certainly briefed on the bribery statute, and many agents know some of these statutes better than lawyers.

Senator MATHIAS. So it is no matter of principle to you.

Mr. PUCCIO. No, no.

Senator MATHIAS. It is a question of who is going to be the most competent in running the show?

Mr. PUCCIO. Right.

Senator MATHIAS. It is true that at least some substance was given to the objections, that the lawyers in some cases did frame the circumstances; isn't it true? Let me give you a [195] case. In the *Kelly* case, it was one of the lawyers who was witnessing the show who made the telephone call into the room and said, "Keep

Kelly talking," because his reluctance to take the bribe was just being "cute", so, "Keep the patter going"—isn't that true?

Mr. Puccio. Yes, that might be part of my reaction that is negative toward that, because I think you maybe draw lawyers into something that is more ably done by others who have that investigative responsibility. And not that I believe that there is a solid division between the investigators and the prosecutors, the investigative agent and the lawyer. But I am wondering maybe outloud about whether—although I have been asked this question before, and I think I have responded the same way—about whether it is that wise.

One of our reasons—and I think it was essentially my decision, at least initially, to have attorneys there—is because the agents, I felt, were doing very, very delicate work in this case. It was a very, very sensitive case. If something went wrong, to put it in the vernacular, somebody would have been on the line, I suppose, and I felt that it was a display of our support for the Bureau to have an attorney there, so if something went wrong it was, let us say, 50 percent the attorney's fault and 50 percent the agent's fault. It was more a supportive thing rather than a matter of substance.

Senator Mathias. Sort of on the same principle that war **[196]** is too serious to leave to generals?

Mr. Puccio. Yes, something like that.

Senator Mathias. Well, now, in your discussion of the continued use of Errichetti, I think you made it clear that his track record, or success rate, or whatever you want to call it, was an important element in the approval of the offers of bribes to Members of Congress. Isn't that right?

Mr. Puccio. Right.

Senator Mathias. And you said, in assessing the weight of the "Noto" incident, that it was only a small blemish on an otherwise good record?

Mr. Puccio. That may have been a feeble attempt at humor, but that is substantially right; yes.

Senator Mathias. This is a hypothetical question, and you may not want to answer it, but what in the world would it have taken to shake your confidence?

Mr. Puccio. Well, I do not know. I never really gave it too much thought.

Senator Mathias. But, presumably, there would be something along the line that would shake your confidence.

Mr. Puccio. Yes. I think that we would have had—it would have been difficult. I suppose, to speculate somewhat, if he had set up another meeting, I think we would have gone along with it, because he had generally been reliable, and we had taught him that we were vigilant, even in the parlance of **[197]** the underworld, and we were going to be on the lookout for a phony. So that might have gotten him to be a little bit more careful about who he brought in in the future, because we spotted the phony commissioner right away. So that might have balanced it toward using Errichetti again; I do not know.

Senator Mathias. So in other words, the hope of redemption is always there in this business?

Mr. PUCCIO. Right—well, he did not make any money on the "Noto" deal, either.

Senator MATHIAS. You do not even need absolution?

Mr. PUCCIO. No.

Senator MATHIAS. You do not need repentence? But you can still reach for redemption?

Mr. PUCCIO. In a sense; yes.

Senator RUDMAN. Mr. Good and Mr. Puccio, I only have three questions, and I ask them because we will have Mr. Plaza here as a witness tomorrow, and he will also be under oath, and at least I want to see if we agree on some facts, although I know that Mr. Puccio, from some of his other statements, does not agree with Mr. Plaza's opinions.

I want to go through a few facts. First—and this is addressed to you, Mr. Good—Mr. Plaza has claimed and continues to claim that you and Mr. Amoroso refused to allow him to meet with Weinberg alone on the 18th of June, 1980, when he wanted to discuss Abscam with Mr. Weinberg alone. This led to his [198] finally being asked to be removed from the investigation and the prosecution. Is that true?

Mr. GOOD. I have to explain that whole situation that occurred that day?

Senator RUDMAN. Well, could you first answer as just "Yes" or "No," and then you are free to explain?

Mr. GOOD. It is really not a "Yes" or "No" answer. "Yes," in one respect, but "No," in another.

We were requested to come to Washington to discuss specifically the Congressman Kelly case and the Congressman Jenrette case, and we were asked to come as a group by the prosecutors in Washington.

Senator RUDMAN. Who is "we"?

Mr. GOOD. Agent Amoroso, Mel Weinberg, and myself. We arrived down here prepared to discuss the Kelly and Jenrette case, and when we arrived, we were told that Plaza and Weir were also going to be here, and they wanted to interrogate each and every one of us independently. We said that that was not acceptable. No. 1, we were here to discuss the Jenrette and Kelly case, and if they wanted to go into the other cases, we would be prepared to do that with them, but at another time. And we were not at the stage at that point where we felt that we were conversant enough and had had the opportunity to review all the facts necessary to sit down and individually discuss with them at that time.

[199] I think what you have to understand is that this man was an antagonist from way back. He had hoped that the whole thing was going to, as I quoted him, "blow up" in our faces. So, he was not there to sit down and discuss things constructively and put the cases together. He was there to cause problems, and that was the feeling that we all had. So, under those conditions, I felt that it was not going to be productive to allow what they had in mind to take place, and we did refuse under those circumstances to discuss them.

The other prosecutors sat down with us, discussed the cases with us, accomplished what they wanted. When they were preparing for trial, they had free access to all of us—myself, Weinberg, Amoroso—on a one-to-one basis, and it worked out perfectly well. So, that was not my intention at that moment, to preclude any one prosecutor from talking to anybody independently. It was not the time nor the place, nor had they made the request. It was a thing out of the blue that came upon us.

Senator RUDMAN. Well, when you arrived in Washington and it came out of the blue, did you consult with anyone other than Mr. Amoroso as to whether or not you ought to go forward and accede to his request, or deny it?

Mr. GOOD. We said that we would discuss the whole matter openly, together, if that was what they wanted, but they refused, so I said that, under the circumstances that they laid [200] down, I did not find it acceptable.

Senator RUDMAN. Did you discuss that with any of your——

Mr. GOOD. I did not have time before I made that decision, but immediately upon making it, I went right back to the Assistant Director of the FBI in charge of the Criminal Division and advised him of what I had told these people, and he concurred completely.

Senator RUDMAN. Did you advise Mr. Puccio?

Mr. GOOD. I do not believe I did right at that moment; no.

Senator RUDMAN. The second question, probably directed to you, Mr. Puccio, he states that not only were there many conversations that were not recorded, for which there were no 302 reports—which I guess we can agree on; you have agreed to that today and given us the reasons why these were not, which I can understand. He also says that he and Weir were denied access to tapes by you; that you had a teletype sent out to the FBI—this is according to Plaza—to the effect that no tapes should be given to any prosecutors without specific authorization—I assume you, or possibly from Mr. Good—and he states further, "This was subsequently reversed by the Department of Justice" here in the District of Columbia headquarters.

No. 1, is that true, and was it reversed?

Mr. PUCCIO. I can tell you what the accurate facts were. Sometime in the summer of 1979—I would say July of 1979—I was [201] planning to go on vacation at the time—and we had a meeting in Washington where it was understood that we would try and assist the Jersey prosecutors—namely, Bob Del Tufo was the person I dealt with mostly—in working with the FBI to develop some political corruption cases over in New Jersey. At that time, there was a tremendous amount of distrust on the part of the Bureau insofar as Plaza was concerned, and I think for good reason, and it might take a long time to explain, and I do not know if it is worth it. In any event, I was requested by the FBI to authorize materials going over to Plaza. In other words, they were going to transmit this stuff, which was in my office at the time, to Plaza through me. I said, "Fine. If you feel comfortable doing it that way, fine."

As soon as the teletype went out, announcing, I guess is the way it was put—I never saw the teletype—that the Jersey people would have to get tapes from me, they got their backs up about it, they became very upset. Del Tufo called me and said, "This is sort of a slap." I said, "Well, I would not view it that way. We have the materials. We are going to have to give them to you no matter what is in the teletype, anyway. But, if you feel bad about it, I will call up and see that it is countermanded," and it was. It struck me as a petty low-level-type thing, without any substance whatsoever. It apparently meant a great deal more to Plaza than to me.

Senator RUDMAN. The final question that I have on [202] that—and I am going to discuss this with Mr. Plaza tomorrow—is that he says that in the MacDonald and, I believe, the Maressa case, Eric Holder and one other, who were the replacements for Plaza and Weir when they asked to be taken off Abscam, eventually agreed with his, Plaza's, view of Abscam, which is well known to you, that it was something that was really not as has been stated by you and Mr. Good, and that they all asked to be taken off the case. So then, four assistant U.S. Attorneys asked to be taken off because they disagreed, and their disagreement, of course, relates to, really, Weinberg and his role and how this whole case was being built. Is that an accurate statement?

Mr. PUCCIO. Not really. The way I would describe that situation is in this manner. First of all, Weingarten and Holder were sent over to New Jersey to handle the Maressa and MacDonald cases when, in fact, the Jersey office either was removed or asked to be removed. The actual details of what happened there, I do not know, but it was between the Criminal Division in Washington and them. I do not think they wanted to stay on the cases any longer. It was decided that, rather than have Brooklyn handle them, which might just sort of feed fuel to the fire, that what would happen would be that the Public Integrity Section would dispatch two people who would move into Jersey and use the grand jury there, and they would develop the cases. Holder and Weingarten were assigned to do [203] that. They ultimately wrote memoranda recommending prosecution in both cases, which may be a different issue separate and apart from the issue of whether or not they agreed with Plaza on whether or not certain things happened, not in the Maressa case—I am not aware of what he said there—but in the MacDonald case. I, for one, would say, even if you accepted everything Plaza says about it as true, I would still come down recommending prosecution of MacDonald. It does not make MacDonald any less guilty if Errichetti, in fact, shared a bribe with Weinberg.

So it may be—I do not know—that, on certain issues, Weingarten and Holder started to lean toward Plaza's view. I do not really know. But, a decision was ultimately made that they had spent so much time over there, and Holder had practically no experience. Weingarten, in our view, had little experience. The decision was made to send in a seasoned, experienced trial attorney who could more objectively look at it. We felt—at least, it was my view, and I did not have the call here—but it was my view that Weingarten and Holder were somewhat impressionable, and they were maybe, to use the term, "Plaza-ized" after a while over in New Jersey—I knew Jim Neal would love that term. So, in any event, we sent in a real experienced fellow.

Senator RUDMAN. Would it be fair to state that Mr. Plaza and those associates who did have discontent, that their [204] discontent derived from the fact that they were very unhappy with the latitude that Weinberg had, and they had total distrust of him, and were concerned that he was setting some of these things in motion? That summarizes it, doesn't it? Is that a fair summary?

Mr. Puccio. I think it fairly accurately summarizes it.

Senator Rudman. Thank you very much.

Senator Mathias. Counsel, do you have any questions?

Mr. Neal. I think Mr. Wheeler had a question.

Mr. Wheeler. Just a few questions, if I may, Senator.

Mr. Puccio, you said that you do not think it would make any difference, in terms of MacDonald's guilt or innocence, if, in fact, it were proved that Weinberg shared in the payment money that was paid on March 31, 1979, with Errichetti. That is what you just said; right?

Mr. Puccio. Right.

Mr. Wheeler. Certainly, you can conceive of one circumstance under which it would drastically affect Mr. MacDonald's innocence or guilt, can't you? What if Mr. MacDonald did not get any of the money, which is Mr. Plaza's contention? What if, in fact, the full $100,000 was split between Weinberg and Errichetti, and MacDonald was indicted as an innocent man? Wouldn't that cause you some concern?

Mr. Puccio. Well, you have got a couple of concepts sort of jumbled up there. On the one hand, to make out the [205] offense, the travel-act offense, you do not have to get a nickel. You know, if I am a public official—by going out and traveling the 6 hours or whatever it was from Camden to Long Island with Errichetti, MacDonald made it all possible. He did not have to get a nickel to be guilty of the violation.

It makes a much better case, from a prosecution standpoint, if you can show that he actually shared in it. But the fact that Weinberg and Errichetti shared it, that in itself, does not prevent you from prosecuting.

Mr. Wheeler. Again, if Mr. MacDonald did not get any of the money, then there is no bribe, is there, in respect to the casino commissioner, which was what the bribe was ostensibly for. If there is no bribe, there is no violation——

Mr. Puccio. Bribery does not mean that I have to take money for my own benefit. You can say to me, "If you drop a case, Mr. Puccio, I am going to buy your brother-in-law an automobile." That is bribery.

Mr. Wheeler. So, now, what you are talking about, Mr. Puccio, is a very different case, though. You are saying that, for $100,000 paid to Angelo Errichetti and Mel Weinberg, Mr. MacDonald was willing to sell his office. That is not what the contention, of course, of the prosecution was.

Mr. Puccio. What was the—well, wait a second, now——

Mr. Wheeler. The contention was that Mr. MacDonald was going to get money in order to guarantee a license to the [206] casino.

Mr. Puccio. I did not investigate those cases before the grand jury and prepare them for trial. If I were to brainstorm, so to speak, a prosecution like that, once I made a judgment that MacDonald was involved in it, that he made it possible, that he sold his office, I would prepare that case from the standpoint—I would ask the judge to charge the jury that he did not have to keep a nickel of the money. Legal theory here is the same. You are talking about strategy in terms of prosecuting the case.

Mr. WHEELER. All right. Mr. Puccio, you also said, in response to Mr. Neal's question about whether or not Weinberg could possibly have shared in any of the bribes that were paid to the various Congressmen, that all that money was accounted for. I would like to draw your attention to the trial transcript in the Thompson and Murphy trial in which—and you are right, it was all accounted for, and here is how it was accounted for. Mr. Cook, who accounted for the money, testified, as follows—that Criden explained to him that what happened was that Criden gave Thompson $20,000 in the limousine, that Mayor Errichetti would get $10,000, that Silvestri would get $3,500, and that Mel and Tony would get $5,000.

Mr. PUCCIO. Right.

Mr. WHEELER. Now, who do you suppose "Mel and Tony" were?

Mr. PUCCIO. I know who Mel and Tony were.

[207] Mr. WHEELER. Mel Weinberg and Tony Amoroso?

Mr. PUCCIO. OK, but you are talking about what defense counsel argued at the trial, based on what Cook was told by Criden. I had the benefit of interviewing Criden, OK? Now, Criden told that to Cook, but that was not true.

Mr. WHEELER. Well, when you are saying that the money was accounted for, the only account given of the Thompson payment of the $50,000 is a public account given under oath that calls for $5,000 to be paid to Weinberg and Amoroso?

Mr. PUCCIO. No, that is not the only account. There is Criden's account of what happened, which is the direct account.

Mr. WHEELER. And what did Criden say under oath?

Mr. PUCCIO. Criden never testified, but——

Mr. WHEELER. That is right. That is my point.

Mr. PUCCIO. He was interviewed by us on February 2, 1980.

Mr. WHEELER. But you are relying on an interview with Criden as opposed to the sworn testimony of Ellis Cook, who was not even being prosecuted, who was Criden's partner?

Mr. PUCCIO. Well, in addition to that, that argument was—well, there was a motive for Criden to tell Ellis Cook that five was going back to Tony and Mel. The motive was that Criden could get a bigger slice of the proceeds—in other words, cheat his law partners, which is something not that unusual in this kind of situation.

[208] Now, in addition to that, no defense counsel, no defendant ever advanced this argument, and by the absence of it, one has to conclude that it just did not happen.

Mr. WHEELER. One of the problems, of course, Mr. Puccio, that you recognize is that no defense counsel in any case, tried before any court, ever had access to exhibit 63 and exhibit 65, from the Brooklyn-Queens office, which Mr. Neal and I have had an opportunity to review.

Mr. PUCCIO. And what are those?

Mr. WHEELER. That is the 25 volumes of Abscam documents that were collected by Brooklyn-Queens and the Washington Headquarters documents on Abscam. It is very difficult for a defense attorney to cross-examine effectively when he does not know what the information is, isn't it?

Mr. Puccio. Well, what have you gleaned from those 65 volumes on this point that you would like to tell defense counsel about?

Mr. Wheeler. Well, I think that we have gone into some of that already——

Mr. Puccio. For instance?

Mr. Wheeler. Some of the internal documents that Mr. Neal has referred to. But——

Mr. Puccio. Not on this point.

Mr. Wheeler. Mr. Good, let me ask you a question. On the Rosenberg CD's—and you understand, Mr. Good, that the [209] reason that we are interested in matters that may seem peripheral, such at the Rosenberg CD's, is because if Mr. Weinberg was able to scam the FBI and induce the FBI to grant him rewards for recovering CD's that were, in fact, never really recovered, but which he himself induced to be put on the market, then we do not really know what else Weinberg might have been doing—you understand, that is why we were interested in these issues?

Mr. Good. Yes.

Mr. Wheeler. All right. Now, Mr. Good, on October 6, 1978, Weinberg had a conversation with Rosenberg in which this issue first came up about CD's. I do not know if you recall——

Mr. Good. I should preface all these remarks by a statement that I made this morning. Prior to this, Weinberg had been told, prior to the dealings with the Rosenberg CD's, it was made very clear to him by me, personally, that he was not going to get any future consideration for CD deals, that we were not interested in them, and only to use it as a vehicle of enhancing our credibility and developing a rapport with these people. So he was well aware of this during the Rosenberg CD transaction.

Mr. Wheeler. He was well aware that you had told him he would not get any rewards for CD's.

Mr. Good. That this would not be a consideration, right [210]—or a primary consideration—and that the consideration in this respect would be the introductions that we gleaned to these people as a result of using this as an instrument.

Mr. Wheeler. Let us assume that to be the case, Mr. Good. Let us assume that they were, in fact, merely for an introduction—at least, that is what you thought they were for. Again, on October 6, in his introductory conversation with Mr. Rosenberg, Mr. Weinberg is the one who broaches the whole topic of CD's, even though you have already told him now that it is not going to get him anyplace. And it becomes very clear in this conversation on October 6 that Mr. Rosenberg does not even really know quite what Mr. Weinberg is talking about, to the extent that at one point, Mr. Rosenberg's partner, Mr. Minsky, says, "I do not know how this paper is manufactured. That is plain and simple."

Weinberg then says, "All you need is a good printer and a typewriter."

Then, in subsequent conversations on October 25, 26, and 30, it becomes even clearer that Rosenberg and Minsky do not really know how to do this, and they do it because Weinberg explains to them how they go about getting the paper and getting it printed up, and getting forged CD's. That much is correct; you do not dispute any of that, do you?

Mr. GOOD. No, I do not.

Mr. WHEELER. All right. Now, Weinberg is going through [211] this exercise presumably for some reason. And then we have a document from the files of the Department of Justice on February 9, 1979, from the Miami SAC to the Director of the FBI, saying that Weinberg has recovered $300 million worth of CD's, and he says these were, "taking phony CD's off the street, and this prevents large economic losses to U.S. banks." Now, in fact, no large economic loss of any kind was prevented to any bank, because those documents would never even have existed had Weinberg not asked for them and instructed Rosenberg how to make them; isn't that right?

Mr. GOOD. Yes, that is right.

Mr. WHEELER. And nevertheless, in fact, on May 21, 1979, in another document, the Miami SAC requested a $15,000 bonus for Weinberg, based in part on preventive economic losses and itemizing the Rosenberg CD's as part.

Mr. GOOD. And as you say, this came from the Miami office, and it was communications that were just adding to requests that the New York office had made. I am sure that the Miami office was not aware of my instructions to Weinberg and looked upon that possibly in a little different light than I did.

Mr. WHEELER. And isn't it conceivable to you, Mr. Good, that Mr. Weinberg understood that? He knew he was dealing with two different offices——

Mr. GOOD. No, because he knew that——

[212] Mr. WHEELER [continuing]. Let me finish, Mr. Good—he knew he was dealing with two different offices, the Miami FBI office and the Brooklyn-Queens FBI office, which were not in communication with each other, and which therefore, one might allow him to do one thing that the other one would not, and he pulled it off.

Mr. GOOD. No, because he knew that the only one that could make a request for payment was the New York office. All of his payments emanated from the New York office, so he knew that he would not be able to do such a thing and pull the wool over anybody's eyes.

Mr. WHEELER. Now, it is also your contention on the Errichetti CD's, Mr. Good, that the FBI knew all along that Weinberg had provided Errichetti with a blank CD that Errichetti used to run off $435 million worth of CD's; is that correct?

Mr. GOOD. That is correct.

Mr. WHEELER. Are you familiar, Mr. Good, with a 302 written on January 26, 1979, by Gunnar Askeland, an FBI agent in Florida who dealt with Mel Weinberg, in which Gunnar Askeland said that on that date, January 26, 1979, he received a call from Mel Weinberg in which Weinberg told him that Weinberg had received a call from Errichetti to meet with Errichetti, that he then met with Errichetti, Errichetti showed him a sample of a CD which Weinberg then approved for Errichetti to use to run off a bunch of CD's?

[213] Mr. GOOD. No, I am not familiar with that 302.

Mr. WHEELER. You have never seen that 302 before?

Mr. GOOD. No.

Mr. WHEELER. Thank you, Mr. Good.

Thank you, Senator.

Mr. GOOD. Now, Senators, I would like to make one comment before we leave that you might consider in your deliberations. This case obviously has received more coverage and more media attention than any case that I have ever been involved or ever hope to be involved in again. And I think that this has brought about a situation where problems that do not normally arise—for instance, third parties being exposed to this. In a normal case, they would not be exposed, because the cases just would not attract that much attention. So what might be particularly important here, because of the nature of the figures that have been involved, would not be a problem that would arise in other cases. And I just think that that should be a thought that you might keep in mind when you are coming up with some recommendations that are going to be applicable constantly.

We realize that we have to be on our guard for these things, and we do not want to expose innocent people to any injury in any way. But the nature of this case is totally different than the average ones that we run into. So this is just a consideration that you might—and also, like Tom Puccio [214] here has been exposed to some outrageous publicity and just totally uncalled for attacks in the media—and the agents, also, we have been affected by this. It is totally uncalled for. There has been a lot of, on both sides of the fence, people being exposed to malicious attacks.

Thank you.

Senator MATHIAS. Thank you, Mr. Good.

Any further questions or statements from the members of the committee.

Mr. NEAL. I would just say, Mr. Chairman, that I have known Mr. Puccio for a number of years, and it has never occurred to me that Mr. Puccio cannot take care of himself, but I hope Mr. Puccio and Mr. Good will consider the fact that we have, I hope, tried to be down the middle, and bring out both sides of this.

Mr. PUCCIO. I certainly think you have. I do not want to flatter you too much at 5 after 7, but——

Mr. NEAL. Always flatter me, whatever time, day or night.

Mr. PUCCIO [continuing]. I think we have no complaint about the way we have been treated by this committee, and I certainly appreciate the courtesies that have been extended to me.

Mr. GOOD. I concur with that.

Mr. PUCCIO. I might change my mind when I see the report, but at least at present, that is the way I feel.

Senator MATHIAS. We will accept those kind words, even on [215] a tentative basis, and we appreciate the fact that you—in Mr. Good's case, he has spent several days with us; Mr. Puccio has spent the day with us—and you have answered all the questions put to you, and we appreciate the time and the effort that this has involved.

If there is nothing further, the committee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 5:07 p.m., the committee was adjourned, to reconvene Wednesday, July 28, 1982, at 10 a.m.]

[1]HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

WEDNESDAY, JULY 28, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to recess, at 10:10 a.m., in room 318, Russell Senate Office Building, the Honorable Charles McC. Mathias, Jr., chairman of the committee, presiding.

Present: Senators Mathias, Huddleston, Simpson, Rudman, Inouye, and Leahy.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy chief counsel.

Senator MATHIAS. The committee will come to order.

This morning we will hear testimony from Mr. Plaza, who served as assistant U.S. attorney during some parts of the Abscam operation. Mr. Plaza, have you received copies of Senate Resolution 350 and the rules of this committee?

Mr. PLAZA. I have, sir.

Senator MATHIAS. You know that under those rules we [2] require that all testimony be sworn. So, if you will rise and raise your right hand, I will administer the oath.

Do you swear that the testimony that you will give to this committee will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. PLAZA. I do, sir.

[3]STATEMENT OF EDWARD J. PLAZA, ESQ., JERSEY CITY, N.J.

Senator MATHIAS. Mr. Plaza, would you like to give us a brief narrative description of your relationship to this whole operation and some conclusions that you may have reached about it?

Mr. PLAZA. Perhaps I should start with a little bit of my background and a résumé of just who I am.

I graduated from Fordham University Law School in 1965. I was on active duty in the U.S. Army from 1966 to 1968. After my stay in the Army, I went to work for Mr. Frank Hogan, who was the district attorney in Manhattan. I worked for him for a period of 4 years as an assistant district attorney in Manhattan. Then, I went to the U.S. attorney's office in New Jersey in 1972, where I was assigned as an assistant U.S. attorney in the Criminal Division. After a period of time, I was made the deputy chief of the Criminal

Division, then the chief of the Criminal Division, then the executive assistant U.S. attorney. Then when Mr. Del Tufo, who was the U.S. attorney, left and his first assistant became the court-appointed U.S. attorney, I was made the first or chief assistant U.S. attorney in that office.

I got involved in Abscam in April of 1979, when I was assigned by the then U.S. attorney, Mr. Robert [4] Del Tufo, to assist in a joint investigation which was being conducted in the eastern district of New York. I was assigned along with Mr. Robert Weir, who was also an assistant U.S. attorney and also serving as the deputy chief of the organized crime strike force. The head of the organized crime strike force, Mr. Robert Stewart, was also involved in the case.

Essentially, it was those four people, Mr. Robert Del Tufo, Mr. Robert Stewart, Mr. Weir, and I, who were assigned to the Abscam case from the U.S. attorney's office in the district of New Jersey.

Senator **Mathias**. Please continue.

Mr. **Plaza**. Well, almost from the outset, from April of 1979, it became very clear to me and to the others who were assigned in that case that there was really very little control over this investigation. There were a great number of unrecorded conversations. When the conversations were recorded, they were not documented in any fashion. It became, as I said, clear from the outset that the Government did not really understand precisely what was taking place. We brought that to the attention of Mr. Del Tufo and Mr. Stewart, who in turn brought that to the attention of the people down here in Washington initially. We also brought that to the attention of our counterparts in the eastern district of New York.

As time went on, we began to recognize additional [5] problems. There was really an evolution of understanding. Initially, as I said, our concern was the difficulty that we might have in prosecuting any of the cases which would come from Abscam. Initially, we were assigned to participate jointly. There had been no breakdown or assignment of cases for prosecution.

As time went on, we began to recognize that there might be some entrapment problems in the case or due process problems. We are in the third circuit. The third circuit had come down with a case called *United States* v. *Twigg*. That case was sort of the landmark case in the United States on so-called due process rights. So, everything we did, we looked at with that case behind us. As time went on and we received additional information, we began to understand that perhaps there was something even more sinister than just an entrapment or due process problem. That is the creation of the illusion of criminality when perhaps criminality was not there. That really took place starting around January of 1980 as we received this additional information, as we interviewed additional people. We once again brought those concerns to the attention of our counterparts in the eastern district and also to the attention of the people down here in Washington, D.C.

When we attempted to interview Melvin Weinberg with regard to a great deal of these concerns, we were precluded from conducting that interview by special agents of the FBI. That [6] happened in June of 1980, at which time both Mr. Weir and I demanded to be taken off the Abscam case. We demanded that in writing on that occasion. I had also requested to be taken off Abscam serveral times orally. I had previously demanded to be taken off Abscam in February of 1980 as well.

We were taken off of Abscam. There were a couple of people who were assigned to replace us. Those people were from the Public Integrity Section here in Washington, D.C. Essentially, we were out of Abscam from June of 1980 up until around November of 1980, at which time Mr. Robertson asked us to take a look at a couple of transcripts of testimony in cases that had already been tried. He asked us to assist him in making a determination about the viability of the two cases which were still pending in the district of New Jersey. When we reviewed those transcripts, we came to the conclusion that agents and the Government informant were testifying falsely. What we did is, we put together a memorandum stating those concerns. We sent it to Mr. Robertson, who sent it to Mr. Ruff, who was the U.S. Attorney for the District of Columbia. We sent that memorandum to Mr. Heymann, bringing to his attention the false testimony that had taken place, based on our knowledge. All we had reviewed at that time were about six transcripts, I believe these involved the *Myers* case, and also a proceeding before Judge Fullam down in Philadelphia.

[7] After we sent that, we waited about 3½ weeks. The next thing that we knew, we were testifying before Judge Pratt based on a memorandum that Irvin Nathan had created. When we saw the Nathan memorandum, we came to the conclusion that the Nathan memorandum itself was a further deception of the courts. What Mr. Weir and I did then was to send the memo which we initially sent down to the Department of Justice directly to the court.

And that sort of, I think, brings me here and probably brought me to the courts that I have previously testified before.

Senator MATHIAS. Let me ask counsel a question. Do we have copies of the memorandums that Mr. Plaza just testified about?

Mr. NEAL. We have, Mr. Chairman, most of the memorandums Mr. Plaza has listed. We have them under rather severe restrictions from the Department of Justice.

We have not been allowed access to other memorandums—that are in a chain of series of statements and counterstatements—that constitute prosecutive memos. We have been, supposedly—and I have no reason to doubt the young man who is doing it—we have supposedly been given the factual portions, been briefed on the factual portions of those memos we have not seen to the extent that they are answers to Mr. Plaza's allegations.

In short, we do have a number of the memorandums, and we [8] have presumably been briefed on the prosecutive memos that we have not been allowed to see.

Senator MATHIAS. Now you understand the state of our knowledge.

Mr. PLAZA. I do, sir.

Senator MATHIAS. So, your answers to the questions propounded to you this morning will be of some importance in understanding not only exactly what happened but how you view what happened and the conclusions that you reached.

We will start our questioning with counsel.

Mr. WHEELER. Mr. Chairman, Mr. Plaza has testified at some length before the Edwards committee in the House. I would ask, with the chairman's permission, to make Mr. Plaza's testimony on June 2, 1982 before that committee an appendix to the record before this committee.

Senator MATHIAS. Is there objection?

Without objection, it is so ordered.

[See exhibit 15, page 455 *infra*.]

[9] Mr. WHEELER. Mr. Plaza, in your testimony before the Edwards committee on June 2 and again on June 9, you testified at some length. In our view you reached three or four very important overarching conclusions. What I would like to do this morning is to begin by first stating what those conclusions are and then going through in brief fashion the principal building blocks on which you appear to have based those conclusions.

Let me first read the conclusions that I am referring to. On June 2, 1982, you stated: "First, let me state that Abscam represents the selective use of technology to create an illusion of criminality. It is and was tantamount to prosecuting the actors in a play for following a script."

The second general conclusion is: "I am saying that Abscam is a perversion of the truth."

The third general conclusion appears at page 40 of your testimony on June 9 before that committee, in which you say: "Get the transcripts and the tapes that it relates to and then hold sessions based on those memoranda, the transcripts and the tapes. And, if you don't come to the conclusion that Abscam poses some of the most grievous threats to civil liberties, then bring me back here and hold me in contempt of Congress for wasting your time."

The fourth conclusion is: "If you do agree, then you are in a position to do something about preventing another [10] Abscam."

What I would like to do, Mr. Plaza, in somewhat orderly fashion is to go through the principal events on which you base those conclusions and then ask you at the end what in your view Congress can and should do to prevent another Abscam, as you suggested before the Edwards committee.

First of all, have I accurately summarized your principal general conclusions from your testimony at the Edwards committee?

Mr. PLAZA You have, sir.

Mr. WHEELER. The principal building blocks, Mr. Plaza, that we perceive from your testimony and from the many documents that you referred to in your testimony—and when I say your testimony, incidentally, I refer not only to your testimony before the Edwards committee, but to your testimony in some of the Abscam due process hearings as well. Let me just run through very quickly the building blocks that we perceive. Please stop me if you think that I am not characterizing any of them fairly.

The first one you have really alluded to already. That is that early on in your involvement in Abscam you and your colleagues, especially Mr. Weir, perceived that important meetings and conversations were not being recorded by the informant, Mr. Weinberg, or summarized by the FBI employees. As examples I refer to the January 19, 1979 meeting between [11] Errichetti and Weinberg; the January 20, 1979 meeting between Errichetti and Weinberg;

and the March 30, 1979 meeting between Errichetti and Weinberg, all of which you essentially uncovered as having occurred even though they were not recorded or documented by a 302. Is that one of the building blocks?

Mr. PLAZA. It would be, yes.

Mr. WHEELER. Second, the evidence that you uncovered or highlighted that the Rosenberg CD's for which—at least in part—Weinberg received a bonus appeared to have been instigated in fact by Weinberg himself, unbeknownst to the FBI. Is that a second building block?

Mr. PLAZA. Yes.

Mr. WHEELER. Third, regarding the certificates of deposit produced to the FBI or to Weinberg by Mr. Errichetti, you uncovered or highlighted the evidence that suggests that Weinberg again fooled the FBI and that he in fact participated intimately in the creation of those CD's. Is that a third building block?

Mr. PLAZA. Yes, there is certainly evidence of that.

Mr. WHEELER. Fourth, you uncovered evidence that Weinberg shared in the Errichetti bribe of January 20, 1979, of $25,000. Is that correct?

Mr. PLAZA. Well, I believe there is some evidence that that may have taken place.

[12] Mr. WHEELER. Yes, in all these instances, just to be clear, Mr. Plaza, I am referring to the revealing or the highlighting by you and your colleagues of the existence of some evidence.

Mr. PLAZA. That is correct, sir.

Mr. WHEELER. All right. Next is evidence that Weinberg shared in the MacDonald bribe of March 31, 1979, and induced Commissioner MacDonald to act in a bribe payoff, essentially, without his knowing that that is what he was doing.

Mr. PLAZA. Once again, there is certainly evidence of that, sir.

Mr. WHEELER. Next is the evidence that Weinberg or Errichetti induced a Mr. Edward Ellis to say to McCloud that politicians were involved in the Garden State Race Track, to make incriminating statements about Senator Williams on March 5, 1979, to Agent McCarthy, and to construct a ploy basically whereby Weinberg and Errichetti could share in a $100,000 payoff.

Mr. PLAZA. Once again, there is evidence of that, sir.

Mr. WHEELER. Next is evidence that—and this has been talked about already at some length in these hearings—that Errichetti and Weinberg, and especially Weinberg, on June 28, 1979, tried to put words into Senator Williams' mouth prior to an important meeting.

[13] Mr. PLAZA. Yes, sir.

Mr. WHEELER. Next is with respect to a private individual, whose name we will not discuss, who was trying to get a casino license in the State of New Jersey. You uncovered evidence that Weinberg first tried to get this private individual to bring in politicians for bribes. When that failed, Weinberg tried to coerce, essentially, this individual by suggesting that the private individual would only get a license by paying off some politicians. When that failed, Weinberg tried to get something on this individual so as possibly to apply pressure.

Mr. PLAZA. That is correct, sir.

Mr. **Wheeler**. Next, you uncovered evidence that Weinberg had received a number of gifts including a microwave oven, television sets, video recorder, and stereo set from Mayor Errichetti.

Mr. **Plaza**. Yes, sir.

Mr. **Wheeler**. Next, although you did not uncover this evidence, you agree or rely on this in part for your general conclusions, namely that Weinberg has falsely stated to the FBI the manner in which the events surrounding Margot Denedy's picture in the New York Times came about. As a result of that, Weinberg got credit where credit was not due.

Mr. **Plaza**. That is a small part, yes, sir.

[14] Mr. **Wheeler**. The last one that I considered a significant building block in your uncovering of the September 13, 1978, tape transcript, the October 6, 1978, tape transcript, and the July 14, 1979, tape and transcript, all three of which suggest that it was Weinberg who initiated the move into political corruption and who then initiated the move into the asylum scenario.

Mr. **Plaza**. Yes, sir.

Mr. **Wheeler**. Those are the principal building blocks, although there are others that are of somewhat lesser importance. Is that accurate?

Mr. **Plaza**. Well, I do not know if they are of lesser importance. There certainly are others. These are some of them; yes, sir.

Mr. **Wheeler**. Now, Mr. Plaza, what I would like to do, again, just because we have covered a lot of material in the last several days, is to go through for each of those building blocks and very briefly summarize the principal evidence for the existence of each of those facts that appear or at least as to which there is evidence that they are true. What I would like to do is to summarize the evidence that we have, most of which was referred to us by you through your testimony and then ask you at the end of this if there is any substantial evidence that you are aware of that we may not have that further supports these building blocks.

[15] First, on the origination of the movement into political corruption, again the principal evidence that we have is the September 13, 1978, Weinberg-Weiss tape, which has been discussed here; the July 14, 1979, Weinberg-Katz tape, discussing what appears to be the asylum scenario; and the October 6, 1978, Weinberg-Rosenberg tape. Are those the principal pieces of evidence that show that Weinberg was the one who originated the move into political corruption?

Mr. **Plaza**. Those are, I would probably say, the principal ones, although I believe there are others as well. I, of course have not had access to any of the transcripts now for more than a year and a half. But, when we were reviewing those transcripts—by we, I am talking about Bob Weir and I—we did come across other indications in 1978, around October and so on, that Weinberg was doing essentially the same kind of thing with other individuals. Of course, there were variations. I want you to understand that, when we came across that kind of situation, we did not pinpoint it. There was not any reason for us to do it at that time. We simply were aware of it. We got these transcripts in very much of a piecemeal kind of fashion. We might get one transcript some time in early 1979 relating to a conversation which took place in 1978. The following day's 1978 transcript we would have received maybe in mid-1980, just before we got out of the case. So, there was no way of following that. But there were other indications in [16] 1978 that this was taking place.

Mr. **Wheeler**. Are the indications that you are referring to indications that appear anywhere other than in other transcripts? Are you suggesting that there is other evidence?

Mr. **Plaza**. No; I think they appear in other transcripts.

Mr. **Wheeler**. If we assume, Mr. Plaza, that is was Weinberg who initiated the move into an investigation of political corruption in the first instance in 1978 and that it was Weinberg who initiated the asylum scenario in July of 1979, is it your contention that that evidence supports your general conclusion that there was a perversion of the truth or an illusion of criminality with respect to the congressional defendants beginning with Congressman Myers in August of 1979?

Mr. **Plaza**. That is difficult to say. We were told certain things when we got into the case. One of the things that we were told was that this case started out as one that addressed itself to recovering art treasures and stolen securities and that there was no intention to move into the political corruption area until Errichetti came along. There was absolutely no move in that area. When we came across some of these other tapes or transcripts, which was much after we got into the case—I am talking about probably 1980—we came to a conclusion that what we had been told was not necessarily true. That was a continuing pattern. We had been told a great many things about a great many things which we learned [17] were not true. For example, when you talk about the sponsor-the-sheik scenario, it was very important for us to learn just who inititated that scenario. I mentioned the *Twigg* case. The *Twigg* case, just for a second to go over those facts, reversed a conviction of an individual on due process grounds who was brought into a situation not by a Government agent but by a so-called middleman. So, you did not have an entrapment kind of defense. But the court in *Twigg* highlighted the initiation of the scheme by the Government as an important factor in coming to its opinion to reverse the conviction of *Twigg*. Therefore, it became very important to us to determine just who started bringing these people in, who was it that first initiated this. We were told that it was Harold Criden, and it happened aboard a boat, I think, on July 26. I personally asked Mel Weinberg about that when we received some contrary statements from different individuals. Weinberg told me—and this happened November 28 at the Halloran House in New York City—that he and Tom Puccio had devised the scheme.

So, it was once again something which was inconsistent to what we had been told. So, that is the only way that I can answer your question. There are a great many things we had been told that we, as we began learning the facts, learned were simply inaccurate.

Mr. **Wheeler**. In sum, then, to the extent that the law that was applicable to the cases was the law of the third [18] circuit through *Twigg*, if the Government through an informant had originated the asylum scenario, that would be one factor that you were concerned and are concerned today would go toward a due process defense.

Mr. **Plaza**. Yes, sir

Mr. **Wheeler**. To the second building block: regarding the possible falseness of the way in which the Rosenberg certificates of deposit came into being, the principal evidence that we are aware of—and again I ask you if this is the principal evidence—is the interview with Mr. Rosenberg that you participated in conducting in June of 1980 and the Rosenberg testimony in the *Myers* due process hearing on February 16, 1979. Is that the principal evidence to support the possibility that in fact it was Weinberg who intitiated the creation of the Rosenberg CD's?

Mr. **Plaza**. That is part of it. And then you have to consider the same kind of evidence with regard to the production of the CD's which supposedly came from Errichetti.

Mr. **Wheeler**. Right. We will come to that next. What you say is that that provides a parallel example.

Mr. **Plaza**. Well, it does more than that. In the first instance, when we heard it from Rosenberg, we did not believe Rosenberg. We told Rosenberg we did not believe him. And it is the surrounding circumstances within which Rosenberg told us that. Rosenberg was pleading guilty and had been told that, [19] if he had lied to us in any fashion, his plea would be vitiated and he could be prosecuted for all of the offenses he might have committed. He insisted, he even agreed to take a polygraph examination. We still told him we did not believe him. Then we took a look at the Errichetti situation, and we started to place some additional credence in what Rosenberg had told us. So, you cannot disassociate these things.

Mr. **Wheeler**. Aside from the parallel to Errichetti, the evidence with respect to the Rosenberg CD's is Rosenberg's own statement in the June 1980 interview and his testimony.

Mr. **Plaza**. Yes. And it is supported in some way by the transcripts as well, sir.

Mr. **Wheeler**. With respect to the Errichetti CD's, which is next, the principal evidence that we have is the March 8, 1979, tape transcript in which Errichetti says that Frank, apparently referring to Mr. Pulini, "has to give me the papers that you gave me to get printed up." He is talking to Weinberg when he makes that statement. There is also a document in the files of the Department of Justice in March 1979 that is one of the due process exhibits; I think you are aware of what I am talking about. There is another document created in January 1979 which says that Errichetti had given Weinberg a sample CD in January 1979.

There is another document in the files of the Department of Justice contemporaneous with the March 8 meeting saying [20] that Errichetti had turned over $435 million in fraudulent CD's. There is yet another document in the files of the Department of Justice written by two prosecutors in late 1980 in which they rely on some of this evidence but, not being aware of the other evidence, draw certain conclusions contrary to some of the other evidence.

Finally, there is an affidavit, which was referred to yesterday, that Mr. Puccio prepared and submitted to a court on June 15, 1979, which seems to suggest again that Errichetti himself created these certificates of deposit and that Weinberg was not the initial source.

Is that an accurate summary of the prinicpal evidence supporting the claim that Mayor Errichetti in fact produced these certificates of deposit with Weinberg's help, not by himself?

Mr. **Plaza**. That plus you have to look at the transcript which was provided to us, the transcript of that March 8, 1979, meeting between Errichetti, Amoroso, and Weinberg. In that transcript of some, I don't know, 60 or 70 pages, there is a parenthetical remark, nonpertinent, about shoemaker, small "S". Bob Weir and I went over to the FBI in Newark, where they had a tape of that particular conversation. We learned that the Shoemaker was not small "S" but big "S", C. C. Shoemaker. And C. C. Shoemaker was the individual who allegedly signed off on these certificates of deposit. That gave us, along with all of these other things, an additional kind of concern with regard [21] to who actually created those certificates of deposit. Mel Weinberg was specifically interviewed on that as late as, I believe, January 1981, when he was confronted with a 302 which was written by a special agent which indicated that Errichetti had simply received a sample of a fraudulent CD and then returned it. He specifically denied it on that occasion. After we testified and revealed certain of this evidence, he then came forward and, without the Government producing the evidence to the contrary, testified that in fact he did give a sample to Errichetti.

Mr. **Wheeler**. One thing that we should probably make clear, Mr. Plaza, is that it is not your contention, is it, that the evidence is conclusive on these various issues. For example, the evidence is not conclusive that Weinberg in fact participated in preparing the Errichetti CD's. It is just that there is some evidence that suggests that.

Mr. **Plaza**. That is correct, sir.

Mr. **Wheeler**. For example, with respect to the Errichetti CD's, there is the January 1979 document prepared by an FBI agent saying that the way it occurred, in fact, was that Errichetti produced those documents himself.

Mr. **Plaza**. That is correct, sir.

Mr. **Wheeler**. The next building block, Mr. Plaza, is the possibility that Mayor Errichetti and Mel Weinberg shared the $25,000 bribe that was paid to Errichetti on January 20, [22] 1979. It was you and Mr. Weir who first ascertained that, in fact, Mel Weinberg and Mayor Errichetti had met in an unrecorded, undocumented meeting at a Holiday Inn in Long Island on January 19, 1979, the day before the payoff, and met again shortly after the payoff on January 20, 1979, at which time Errichetti gave Weinberg an envelope. Is that right?

Mr. **Plaza**. That is what Mr. DiLorenzo told us.

Mr. **Wheeler**. In fact, it is DiLorenzo's testimony, together with a charge card record on Weinberg's telephone charge card showing that he did make a telephone call from that Holiday Inn on the 19th, thereby proving that he was there, which you rely on to support this?

Mr. **Plaza**. Once again, in order to understand that, you have to have a chronology DiLorenzo told us about certain gifts. DiLorenzo told us about certain meetings. We did not believe DiLorenzo. DiLorenzo is Errichetti's nephew, and there is good reason not to believe him. But we believed we did have a responsibility to look into what DiLorenzo told us. When we confronted the people with DiLorenzo's statements, we were told that no gifts had been given and, in fact, there were no meetings between Weinberg and Errichetti on January 19 or 20, and there was no meeting Weinberg and Errichetti on April 1. And then we were pointed to a cassette recording as further evidence that those meetings could not have taken [23] place.

It was only afterward when telephone toll records, which we requested be produced but were not produced to us, were produced to others that we were able to learn that in fact the meetings that DiLorenzo told us about did take place. The meetings, for example, on January 19 and 20 and the meeting on April 1 did take place. Once again, there was some corroboration now because of a change in time on a cassette recording.

So, without a chronology, I do not think you can appreciate how it was that we came to understand these things.

Mr. **Wheeler**. All right. But that chronology is the one you have just given us.

Mr. **Plaza**. That is correct, sir.

Mr. **Wheeler**. Now, on the April 1 incident, there we are talking about Weinberg's possible sharing in the $100,000 payment made allegedly to Commissioner MacDonald through Angelo Errichetti. The contention here is that Weinberg may have shared in that $100,000. Actually, the most severe statement to be made about this incident is it is possible that Commissioner MacDonald did not get any of the $100,000 and, in fact, he had been misled and appeared there not knowing what was going to be happening.

Mr. **Plaza**. In order to appreciate that, you really have to review all of the tapes surrounding that time period and then also take a look at the telephone toll records and look at [24] the unrecorded conversations and, in addition to that, learn about unrecorded and undocumented meetings. You had Weinberg going down to Florida and meeting with different people, and in no way is it even documented. When you put all of that together, as Mr. Weir and I and Mr. Plaisted attempted to do, you, I think, come to the conclusion that there is evidence that Commissioner MacDonald was an unwitting dupe in this case, yes, sir.

Mr. **Wheeler**. And, further, that Weinberg and Errichetti split between themselves the $100,000.

Mr. **Plaza**. Yes, sir.

Mr. **Wheeler**. Again, so that the record is clear on this, there is evidence going to the contrary which is that, as you have already pointed out, DiLorenzo, whose testimony is the principal factor here, is the nephew of Mayor Errichetti. Second, DiLorenzo had testified and had been interviewed on prior occasions and had never raised this matter before, but volunteered the information in a subsequent interview. Third, DiLorenzo kept a calendar in which he noted all of his meetings and trips. When that calendar was produced, it did not have any reference to the trip or to a trip on April 1, 1979.

As we understand it, those are the principal items of evidence that suggest that Weinberg did not meet Errichetti on April 1. Are you familiar with all of those?

[25] Mr. Plaza. I am not, but I would say it is not accurate to state that he was interviewed on previous occasions and volunteered it to us and had not made those statements before and then volunteered them to us. He was interviewed on other occasions, but in fact Mr. Weir complained about the kind of interviews that were conducted. He was never really given an opportunity to expand. He was brought before a grand jury. Without going into grand jury testimony, which obviously I cannot do, he was not really asked the kind of questions which would have elicited any of these answers.

He did not volunteer it to us. We were asking him about Commissioner MacDonald's involvement in this case. It became important to us to know whether Commissioner MacDonald knew beforehand what was going to take—what took place at that meeting. It was in response to those questions that he gave us this information. It was certainly not volunteered.

Mr. Wheeler. The next building block is the Ellis play-acting event of early March 1979. This one is a little more difficult to summarize, but let me try. You tell me if there is anything that should be added.

As we understand it, the evidence consists, the principal evidence consists of three tapes, transcripts: March 1, March 5, and March 8, 1979. On March 1, 1979, Ellis was talking to Mel Weinberg. In the course of that conversation, Weinberg seems to suggest to Ellis that Ellis will not be able to [26] borrow money from Abdul Enterprises for his racetrack unless Ellis brings in a politician, at which point Ellis raises the name Senator Williams and Alex Feinberg. Weinberg then essentially suggests that that should be repeated when Ellis meets with McCloud, of course without Ellis knowing that it is an FBI agent.

The next event that occurs is on March 5, 1979, when Ellis does meet with Agent McCarthy, going by the name McCloud, and he does quickly volunteer that Feinberg is Senator Williams' bagman. He repeats that in a couple of instances. And the next event that occurs is on March 8, 1979, in a conversation among Errichetti, Weinberg, and undercover Agent Amoroso, in which Errichetti says that it was he, Errichetti, who told Ellis to say this to Agent McCarthy at the March 5 meeting and that, in fact, it was all a sham.

From that one could infer three things: No. 1, that Weinberg, this is another instance of Weinberg saying to somebody who is seeking a legitimate loan; namely, to borrow money from Abdul Enterprises to replace the burned down race track, he says to this person, you won't get your loan unless you bring in politicians. No. 2, it is some evidence that it was Weinberg who tried to get Ellis to raise Senator Williams' name for some purpose. That purpose could be simply to get further incriminating statements about Senator Williams, or it could be for some other reason. Third—and this is one that [27] seems to use to be very unclear from the reading of these transcripts—is some evidence that Weinberg and Errichetti were again trying to set up some kind of a scam whereby they would be able to defraud the Government out of a payment of $100,000 and share it between themselves when the Government through Agent McCarthy thought that it was really going to be a bribe payment to someone else.

Is that basically the essence of the Ellis transaction?

Mr. **Plaza**. Well, once again, it cannot be taken out of context. First of all, there are four tapes, not three. There are two tapes between Weinberg and Ellis on March 1. Then there is the one tape between Weinberg and Hyman on March 1. There is a tape between Ellis and McCloud on March 5. And then there is the tape between Amoroso, Errichetti, and Weinberg on March 8.

We were told when we first got into this case in April 1979 that Senator Williams had already been criminally involved, that there was evidence in existence to show that Senator Williams had taken a bribe, a $100,000 bribe with regard to the Garden State Racetrack. Those were one of the [28] operative facts that were communicated to us with regard to those things which had already happened.

Now, you cannot take this Ellis thing, once again, out of context. You also have to take a look at some other tapes, and I just have some notes. There is a March 23, 1979, tape between Angelo Errichetti and Mel Weinberg where they talk about a dialog, going over a dialog before the meeting with McCloud. There is an August 15, 1979, tape between Weinberg and Angelo Errichetti where they are talking about bringing in the Congressman, and they are talking about a wet and dry closing; and they are once again talking about going over a script.

There is a tape sometime in October 1978 between, I believe, Weinberg and a man named Linnick. They are talking about bringing in an individual by the name of Sal and going through a script.

You have Eden and Rosenberg, two individuals who come into the case and, within moments after they meet McCloud, they are also talking about how they have bribed politicians in the past.

So, there is this entire pattern which gave us reason to believe that there was evidence that this kind of script or play-acting was being set up. That, in addition to the June 28 tape, that prepping session of Senator Williams, and what we were told when we confronted Weinberg with that particular [29] tape, which was that, if I don't do that, namely putting words into people's mouths, we won't have any cases.

Now, it was all of those things which have given us a basis to believe that there is evidence of that kind of creation.

Senator **Rudman**. Mr. Chairman, I would like to ask one question at this point. I would just like to know at what point in time did you learn of the existence of this Ellis transaction and the fact that it later was proven to be a sham. At what point, Mr. Plaza, did you know that?

Mr. **Plaza**. I believe, sir, that was sometime around May or June 1980, sometime in that period. It certainly was not back in 1979, because we did not have access—a great many of these tapes we did not receive until 1980, most of them, as a matter of fact.

Perhaps I should just explain that, because I think that it is probably the core problem in Abscam. I think, all told, there were probably 900 tapes that were made during the course of Abscam. When we first got into Abscam, there was just a relative handful of transcripts made. Even from those transcripts, you detected, however, that all the conversations were not being taped, because a transcript would relate to a previous conversation. For instance, when talking to Weinberg, Mr. A would say: when I met you yesterday and we talked about such and such.

[30] When we attempted to get a tape or transcript, it was not available. We were finally told that there was no tape made of that particular conversation. In February, Abscam went public, February 1980. Of course, as you well know, it went public with quite a flourish and a fanfare. But there were relatively few transcripts in comparison to the 900 tapes that were made at that time. A good many of them came to our office after that. It was really imposible to listen to all of the tapes in here. You are talking about thousands of hours of conversation. What we wanted to do is review some of the transcripts.

The Newark office of the FBI volunteered on a couple of occasions to assist in the transcript-making process. Their aid was always rejected by the Eastern District of New York. We wanted those transcripts so that we could have some kind of handle on what was taking place. When we started to get the transcripts, in mid-1980, we got transcripts of conversations that dated back to 1978. And it was then that we were able to determine some of these things.

Senator Rudman. Mr. Chairman, I will not pursue this, but I think that it is a central issue here. It is why I asked the question. If you take Mr. Plaza's testimony, it seems to me that, as we look at the guidelines, going back to last week's hearings, and trying to arrive at who controlled this investigation and what safeguards there were, quite obviously, Mr. [31] Plaza, assistant U.S. attorney in New Jersey, essentially knew nothing of this until essentially it was too late to exert any other control. I think it is important, that particular part of his testimony, because what he is talking about are two different time frames. We ought not to confuse the two. One is when the events took place, and we are talking a year or more later when evidence of conflict, if you will, in what was going on came to your attention.

Mr. Plaza. Yes, sir. Just to cite one example, because this one stands out, I made a reference, I think, to a March 23, 1979, conversation between Angelo Errichetti and Mel Weinberg there they were talking about creating a dialog. This was supposed to assist them somehow in meeting with MacDonald. That meeting was to take place, I believe, on March 31, 1979. We received that transcript, I think, in February 1981. We were trying to determine what happened with regard to this MacDonald case. We were quite concerned that MacDonald had been duped. This was a key transcript, and we did not get it until that time.

You can find a lot more information on this if you could get hold of the letters that the FBI from the Newark office sent to us accompanying the transcripts. The Newark office, whenever it trancribed the tapes, would forward a letter describing the transcripts that they were providing to us at that time. For example, let us say in November 1979, there would be a [32] listing of the transcripts which they had transcribed and were including with that November 1979 letter. The Eastern District did not perform that same kind of thing. They would just send you over a pile of transcripts.

What Mr. Weir and I finally started to do is date those transcripts as of the date that we actually received them. We felt that this was going to be a relevant concern.

Mr. **Wheeler**. Mr. Plaza, while we are on this, let me clarify one other thing. You made a statement just now that you had also made before the Edwards Committee. I can quote from the Edwards Committee transcript, which I think is virtually identical to what you just said. That is, it was next to impossible to review the tapes themselves because of the length of the tapes and, I take it, because also of the number of tapes that were being produced.

Mr. **Plaza**. That is correct, sir, yes.

Mr. **Wheeler**. So, what you needed in order to review these tapes or to review the events on a contemporaneous basis was transcripts.

Mr. **Plaza**. Transcripts. And we went beyond that. We had asked Mr. Puccio back in April and May and, I think, June 1979 to have a running log of the events. This had been communicated to him on several occasions. As a matter of fact, he told us on one occasion that it was being done, once again, so we could have some kind of control. There was really a dual [33] purpose. And this is reflected, by the way, in some of Mr. Stewart's memoranda that were forwarded to the Department of Justice. You should know that with regard to each one of those memoranda there was a copy which was also forwarded to Mr. Puccio. We asked for a running log of the events so that we could understand the events as they were playing out. Also, in the event that it might be necessary to make an application for an eavesdropping kind of device, you would have that kind of running log as an affidavit that would be submitted to the courts.

As I said, Mr. Puccio had on several occasions advised us that that was taking place. We never saw any such log.

Mr. **Wheeler**. I think for this committee there is one important ambiguity here that perhaps you can shed some light on. That is, since you recognize that when so many tapes are being generated, it is impossible to review those tapes literally, hearing them on an ongoing basis, is it your belief that the problem in getting the transcripts on a contemporaneous basis was logistical? That is, the FBI office simply did not have the personnel to prepare the transcripts on an essentially daily basis, which is something that could address the question of funding, for example? Or is it your belief that the transcripts were being prepared but simply were not being made available to anybody for review?

[34] Mr. **Plaza**. I do not think the transcripts were being prepared. I think it was a logistical problem. As I said, we offered a solution. We offered it after discussing it with the agents in Newark. They offered to assist in the transcription process. That offer was rejected by the Eastern District. We were told that they wanted to control a certain number of individuals in Brooklyn, and they did not wish to incur additional security problems by having other agents or secretaries in the Newark office getting involved in the transcription process.

You should also know, however, that we did request an opportunity even in July to listen to the tapes. In July 1979 there was a teletype sent at the direction of Mr. Puccio to deny us access to the tapes. This was an FBI teletype. We learned of that only because the FBI agents in the Newark office, including the special agent in charge, came to us in a rather embarrassed state and indicated that, even though, you know, you fellows are working on this thing with us, Mr. Puccio has directed this kind of teletype which would deny you access to a review of those tapes.

We brought that to the attention of the people down here in the department, and they had that order rescinded.

Mr. **Wheeler**. Mr. Plaza, there are two more. The next building block that we referred to is the failure of Mel Weinberg to record important meetings and conversations and the simultanieous failure of the FBI agents to [35] document those meetings by debriefing Weinberg after such a meeting and summarizing it in a memorandum form. I think, again, for this committee's purposes it is important to get some clarification on whether it is your belief that the attorneys in the eastern district strike force either shared your view or disagreed with your view that there should be more pressure put on the FBI, or whether it was the FBI that was simply not willing to document these various meetings. For example, we have interviewed some of the attorneys from that strike force who claim that—and we will hear testimony on this tomorrow—they were just as upset as you were as early as April 1979 over the failure of Mel Weinberg to record and over the failure of the FBI agents to memorialize a summary of these various meetings. But, no matter how much they protested and no matter how much you protested, it was the FBI in New York that simply would not carry out that instruction.

What is your understanding of the facts?

Mr. **Plaza**. I cannot comment on what the attorneys in the Eastern District of New York felt about it. All I can say is we made our views known time and time again. We put them in writing. We sent them down to the Department. We communicated them to the people in the Eastern District of New York.

Mr. **Wheeler**. When you did that, did they agree or disagree with you that more recordings and more 302's should be prepared?

[36] Mr. **Plaza**. They did not agree. They did not articulate any agreement. I cannot say that they did not agree in spirit. I do not recall them saying to me: Yes, we agree with you; more of these should be recorded.

Mr. **Wheeler**. The last building block to refer to is that Weinberg may have received gifts from various individuals and in particular from Mayor Errichetti with the participation of Errichetti's nephew, DiLorenzo. Am I correct that the principal evidence of that is the interview with DiLorenzo in June 1980, together with the FBI's own investigation, summarized in something called the Deaton affidavit, as well as the FBI's own internal report reflecting that investigation?

Mr. **Plaza**. No, it goes beyond that. The were other individuals who were also interviewed and who indicated that Mel Weinberg solicited gifts from them. One of them is a fellow by the name of Torcasio. He indicated that he had been solicited by Mel Weinberg, I think, for watches and TV's, as I recall it. There were other individuals who gave gifts to Weinberg. So, there was more than just DiLorenzo's statement.

But the real significance of that, by the way, is not that Mel Weinberg received gifts. If Mel Weinberg had received gifts on the side and then that was accurately portrayed to the court, the courts and the juries would be able to assess that kind of evidence in considering [37] Mel Weinberg. I think the real significance of a great many of these things is that the Government attorneys knew about some of these things and permitted Mel Weinberg to make the statements without correcting them. And that, to me, is far more significant than Mel Weinberg receiving gifts.

For example, with regard to the DiLorenzo gifts, Mr. Weir was present in Washington when Mr. Puccio acknowledged that he knew that Mel Weinberg had received the microwave oven and indicated that he would have the oven removed from the house and he would coach Mel Weinberg with regard to it.

I find that far, far more significant than Mel Weinberg taking some gifts on the side.

Mr. **Wheeler**. Well, but to be fair to Mr. Puccio, Mr. Plaza, at that meeting, after Mr. Puccio made that statement is it not correct that Mr. Weir's memorandum reflects that Mr. Nathan said no one is going to be doing any coaching? In fact, is it possible, depending on your view of Mr. Puccio's credibility, that he was joking when he said that, that he would never have made such a statement seriously in front of his superiors and in front of a number of other attorneys?

Mr. **Plaza**. You know, I was not there, so I certainly cannot comment on whether Mr. Puccio was joking. I know it upset Mr. Weir. I know Mr. Puccio has denied making that statement. I also know Mr. Nathan has testified that no such statement has been made.

[38] Mr. **Wheeler**. DiLorenzo, of course, testified in court, and he testified in front of the grand jury. So, to the extent that there was any concern about these gifts, DiLorenzo was not precluded from making those very statements in front of courts.

Mr. **Plaza**. That is correct. Once again now, DiLorenzo's statement about gifts is significant. But DiLorenzo's remarks about meetings that he made within the same statement are even more significant. When you talk about these meetings, you are talking about the possibility that what they said during the course of some of these conversations about ripping off McCloud and creating a dialog for MacDonald resulted in an unwitting dupe, MacDonald, being indicted. And the evidence of the meetings is tied into the evidence of the gifts. If he can be discredited, as he was, with regard to the gifts, then, of course, you consider that when you consider his testimony with regard to the meetings as well. So, it is really a package.

Mr. **Wheeler**. But I think what is important here, Mr. Plaza, is to try to ascertain exactly what relevance this would have toward your overall conclusion that there was a perversion of truth. All I am simply asking you is, is it not the case that Mr. DiLorenzo—this information surfaced before any of the trials and Mr. DiLorenzo was available to testify, indeed he did testify? So, to the extent that any defendant wanted to [39] make this argument and use Mr. DiLorenzo to make the argument, there was no perversion of the truth based on this?

Mr. **Plaza**. I just do not follow that argument.

Mr. WHEELER. Nothing was hidden in this respect. DiLorenzo testified and could have testified at even greater length had someone wanted him to on this issue.

Mr. PLAZA. Yes, that is correct.

Mr. WHEELER. Mr. Plaza, before I finally get to asking you what it is that you had in mind when you said before the Edwards Committee that Congress could do something about this to prevent another Abscam, I do want to make one further point. During the *Jenrette* due process hearings on May 12, 1981, at pages 217 to 218, you discussed what you thought should exist as a predicate before someone was brought in to be offered a bribe. The court said to you: "When you say that there should be a reasonable suspicion that the individual is involved in some type of criminal activity, can you elaborate beyond that?"

You then said: "Yes, Your Honor. In other words, Mel Weinberg would say Congressman A is coming in today. We wanted to know whether there had been, whether Congressman A was aware of the fact that he was going to be taking a bribe, whether the middleman at least had said Congressman A is coming in and I know he is going to be getting a bribe. Because there **[40]** were several conversations when people came in and they did not know what was going on and it was clear that they did not know what was going on."

One of the issues that has been much discussed in the last few days, Mr. Plaza, is whether it should be sufficient, a sufficient predicate, to bring someone in for the possibility of being offered a bribe on the sole basis that a middleman has said Congressman A is coming in and I know he's going to be getting a bribe. Now, what I have just read to you from your testimony in the *Jenrette* due process hearing suggests to me that you agree with the Government attorneys that that is a sufficient predicate if the middleman at least had said Congressman A is coming in and I know he's going to be getting a bribe.

Do you agree still today that that is a sufficient predicate for bringing in someone to be offered a bribe?

Mr. PLAZA. I have not reflected on it. Really, before I could answer whether I still agree, I would like to reflect upon it. However, let me say this. That standard that I believe and did articulate as being a necessary standard at that time was a standard that no one had been applying up until that time. In fact, the Department's position was that no standard was necessary. It did not have to be a reasonable suspicion.

We came to the conclusion from reviewing some of these **[41]** transcripts that the middleman was not articulating or saying to Mel Weinberg, "I have spoken to Congressman A, and Congressman A knows he's coming in for a bribe." Quite to the contrary, it was always very fuzzy. We were demanding, simply because Mel Weinberg had not been truthful with us with regard to so very many things, we were taking a look at the section of the tape or the transcript just prior to those meetings to make sure that at least the middleman said: "I discussed it with Congressman A, and Congressman A knows that he's coming in to take a bribe." And that standard was not being complied with. We felt that that was an absolute minimum kind of standard that should be complied with.

Mr. WHEELER. Mr. Plaza, can you identify precise instances in which you know that the middleman did not tell, regardless of whether he had actually done it, where the middleman did not tell either Mel Weinberg or an undercover agent that the Congressman who was to be brought in would take a bribe?

Mr. PLAZA. I cannot do it that way because, if it is an unrecorded conversation, you cannot tell whether he told him or not. We were looking for evidence. We were looking for a tape which would have the middleman say: "I spoke to Congressman A and Congressman A knows that he is coming in for a bribe," a rather clear and unequivocal kind of thing.

I do know that there are cases where that did not exist. [42] I am trying to think. I think, for example, October 17, with regard to Congressman Hughes, and I am not in any way defaming the man. Unfortunately, his name has been tossed around in this for some time now. But October 17, my recollection is Silvestri is saying to Melvin Weinberg: "What am I bringing these guys around for?" And Weinberg, I think, tells him, makes it rather clear that you are to bring him in for sponsoring the sheik, and so on.

At the end of that conversation, if my recollection serves me correctly, you have got Weinberg saying to Silvestri: "Can you bring Hughes in?" Now, first of all, that is an indication to me that, even if Silvestri may have raised the name of Hughes before, there is some evidence here that he did not raise it in a criminal kind of fashion because Silvestri is asking during the course of this conversation what have I, you know, been bringing these people around for.

But, second, I do not know of a tape, at least I have not seen a tape, where you have Silvestri saying: "I have spoken to Hughes, and Hughes knows that he is coming in to get a bribe." It may exist, but I did not see it. And I think there are other instances of that kind.

Mr. WHEELER. Mr. Plaza, I only have one more question for you. Before I ask it, I should caution you that the committee has voted not to mention the names of any other individuals, either Congressmen or private individuals or State [43] legislators, who are not convicted defendants.

Mr. PLAZA. I am sorry.

Mr. WHEELER. I am sorry that I had not informed you of that before.

The last question I would like to ask you, Mr. Plaza, is this. What did you have in mind and what do you have in mind today, if anything, that Congress can and should do to prevent another Abscam? If it is not Congress that can and should do something, what can and should the executive branch do to prevent another Abscam, as you perceive Abscam to have occurred?

Mr. PLAZA. It was my hope during the time that I was involved in the Abscam investigation to avoid any kind of sanctions coming down against law enforcement or the FBI. As a matter of fact, when I wrote the Williams memoranda assessing the Senator Williams due process defense, and that was in December of 1979, I was very concerned that at some time in the future the truth with regard to Abscam would come forward and as a result of that the Congress would pass an FBI charter that I thought would unfairly hamper the FBI. I still feel that way.

I think there is plenty—and plenty is a poor word. I think there is more than enough restriction placed upon our law enforcement agencies. As somebody who has been a professional law enforcement agent or attorney for, I guess, about 13 years, I have always felt that way.

[44] I think all that Congress has to do is recognize that, in fact, something went wrong during Abscam and that Abscam was an aberration. That recognition and a statement that Congress recognizes it as such will probably have a salutary effect with regard to FBI undercover operations in the future. I certainly hope that that is the case. I would not want to see law enforcement further hampered by restrictive kind of legislation.

Mr. WHEELER. Thank you, Mr. Chairman.

Senator MATHIAS. Mr. Neal?

Mr. NEAL. Mr. Plaza, we have been cross-examining the other witnesses here in the last few days. I hope I am not being repetitive; I did have to step out. Let me cross-examine you a little bit.

In your testimony before the Edwards Committee, you made one of the most serious allegations I have ever heard made against the U.S. Department of Justice. Let me read you a statement by Congressman Hyde and your answer. I quote Congressman Hyde:

> If I may interrupt, the agents working with you on these cases did not want a proliferation of documents, namely transcripts or reports of conversation, for fear they would be available at the trial through discovery or whatever orders of the court and would relate the whole story, fill in the entire environment around the corruption that was charged in the indictment, and vitiate that or at least possibly create a [45] reasonable doubt. Therefore, the less put in writing and available to the defense, the better.

And you say: "That is correct, sir, that is essentially it."

If you want me to read that again, I will. When I heard this—and I was there—when I heard that long question and the statement and the response, it occurred to me that you were charging the Department of Justice with a conspiracy to cover up in order to convict the innocent or at least vitiate and possibly create a reasonable doubt by the selective preparation of documentation. Do you really mean that, Mr. Plaza?

Mr. PLAZA. I did not accuse the Department of Justice of anything, sir. I did not accuse the FBI of anything. I have the highest regard for both of those agencies. As somebody who—let me finish, Mr. Neal. As somebody who was with the Department of Justice for 9 years, I came to really appreciate the integrity of the Department of Justice attorneys and the integrity also of the FBI agents. As a matter of fact, I have the highest regard for them.

However, sir, on August 9, 1980, I met with Special Agent Amoroso and with other agents of the FBI. I made very clear in no uncertain terms on that day that every conversation would have to be recorded where it could be recorded. Those agents told me at that time they felt that the recording of the June 28 preparatory session of Senator Williams was [46] stupid, not what was said but just the recording was stupid. I told them that they would have to record all of the conversations where they could in the future. I told them where they could not record them, they would have to prepare memoranda of the meetings.

After that August 9 meeting, where it was made very clear, and it was made clear time and time again after that, there are still a great many unrecorded conversations that are not documented in any fashion.

Mr. NEAL. Do you believe, Mr. Plaza—and I want to read this again. Do you beleive that these conversations went unrecorded as a result of a deliberate decision by agents of the Government not to present the full picture in Abscam?

Mr. PLAZA. I think there is evidence of that, yes, sir.

Mr. NEAL. A deliberate decisions by agents of the Government not to record conversations in order that there not be available a full picture to present to the jury?

Mr. PLAZA. I think there is evidence of that, yes, sir.

Nr. NEAL. You recognize the seriousness of that?

Mr. PLAZA. Yes, sir, I do.

Mr. NEAL. After all, another matter I was in a few years ago called Watergate, at least the conspiracy charge there was to prevent the guilty from being convicted. You are charging that this is a conspiracy to convict the innocent.

Mr. PLAZA. I did not say it was a conspiracy to convict [47] the innocent, sir. I said—do you want to read it again?

Mr. NEAL. Let me read it. If you want to change this, for goodness sake, this is part of the public record.

> If I may interrupt, the agents working with you on these cases did not want a proliferation of documents, namely transcripts or reports of conversations, for fear they would be available at the trial through discovery or whatever orders of the court and would relate the whole story, fill in the entire environment around the corruption that was charged in the indictment, and vitiate that or at least possibly create a reasonable doubt. And, therefore, the less put in writing and available to the defense, the better.

And you say, "that is correct, sir, that is essentially it?"

Mr. PLAZA. That is correct, sir.

Mr. NEAL. If that is not a charge of deliberately skewing a record, deliberately failing to record meetings in order to prevent the full truth from coming out, I do not know what that is.

Mr. PLAZA. I did not say it is not such a charge. You said, Mr. Neal, that am I charging the FBI and the Department of Justice with a conspiracy. I stated that I am not charging the Department of Justice or the FBI with a conspiracy. I believe that there is evidence that some agents of the FBI went along with Melvin Weinberg when he decided not to tape-record certain conversations in order to present an inaccurate [48] picture of what subsequently took place, yes, sir.

Mr. NEAL. Then your charge is—the same thing, to me, that I have read here—that decisions were made by certain officials of the Government not to record or otherwise memorialize contacts between Weinberg and targets in order to make sure that a full picture was not available to be presented to the jury?

Mr. PLAZA. I think that is part of it, yes, sir.

Mr. NEAL. That is a serious charge.

Mr. PLAZA. I know, sir, and this is a serious case. If you feel, as I do, that, for example, there is more than a reasonable doubt that

Kenneth MacDonald was not guilty of anything and yet was indicted, then I think you appreciate the severity of just what took place here.

Mr. **Neal**. Let me ask you this. We have been adducing some evidence here for the last many, many hours in this hearing, and I have some suspicions that Weinberg shared bribes up and down the line, I have some grave suspicions that he shared in the MacDonlad bribe, and that he shared in the Errichetti bribe. And one might extrapolate from those suspicions that maybe he shared some of the money Errichetti got in the Myers bribe and the Lederer bribe and some of these others. But suppose he did that. And let us assume that that is true. Cannot you expect con men to rip off anybody around anytime they can? Making Weinberg an [49] FBI informant does not change him, does it?

Mr. **Plaza**. No, sir.

Mr. **Neal**. Is he still a con man?

Mr. **Plaza**. Yes, sir.

Mr. **Neal**. And he is going to con anybody he can anytime he can because that is the nature of the animal. Right?

Mr. **Plaza**. Probably, yes, sir.

Mr. **Neal**. How does that make the fact that Congressman Myers says money talks and bullshit walks, and takes the money, how does that make that a perversion of the truth? Did not Myers take a bribe?

Mr. **Plaza**. Well, you have to take a look at what Myers' defense was, as I understand it, and I have not ever read the *Myers* transcripts. This was something that I saw in a newspaper. And then I did see Judge Pratt's opinion, and he did make some statements with regard to Myers' defense. Myers, I believe, stated that he was play-acting, that in fact he had met with—I do not know whether it was Weinberg or Errichetti—and then came up and made certain statements to, I guess it was Amoroso on that occasion.

Now, I believe that there is evidence that other people were told to playact. Whether Myers did it or not, I do not know. Myers put on a particulary reprehensible and despicable display, no question at all about it. Myers is probably, even if he did that, guilty of taking a gratuity, no question about [50] that. But if Judge Pratt made that an issue, whether or not he was play-acting, in my reading of his opinion I think he did make that an issue, then I think the jury should have had available to it a lot of this other kind of evidence, the Ellis kind of situation, some of these other pieces of evidence which might have assisted them in making a determination. They may very well have come to the same conclusion; that is not the issue. The issue is not whether or not these individuals are guilty of the crimes with which they were charged. The issue is whether or not the Government truthfully presented the evidence in this case. And I have some real doubts about that.

Mr. **Neal**. The fact that I get rather firm in my question does not mean I am mad with you, but I do think an allegation as serious as yours cannot go somehow untested.

Mr. **Plaza**. I agree, sir.

Mr. **Neal**. Let us suppose again that, No. 1, Mr. Weinberg was scamming the FBI and was actually sharing in part of these bribes. And let us assume that he was helping Rosenberg and Errichetti make up CD's and then getting at least the compliments, if not some other reward, for, quote, "recovering," unquote, these CD's. How does that make, again, the Myers, Lederer, et cetera, a perversion of the truth?

Mr. **Plaza**. A perversion to me, sir, is a distortion or something which can mislead somebody in coming to the correct [51] conclusion. And with regard to that, I think the failure to bring up this additional evidence can mislead someone into totally discounting Myers' defense about the play-acting. I think there is evidence that others play-acted. Whether Myers did it or not, I do not know. But there is some evidence of it. I believe that that evidence should have been made available to the jury so that they could have considered it. They could have discounted it, but they should have it available.

Mr. **Neal**. I am not saying that there is not some possible way to extrapolate there. But you are saying because Senator Williams was clearly asked, encouraged to play-act, because, I believe you say, Mr. Ellis, in March of 1979 was clearly encouraged to play-act, others probably were too? I believe that is your position?

Mr. **Plaza**. I think there is evidence of it.

Mr. **Neal**. As I say, that is your position.

Mr. **Plaza**. Yes.

Mr. **Neal**. So, because Senator Williams was encouraged to play-act, Mr. Ellis was encouraged to play-act, and maybe let us take another one, Mr. X was encouraged to play-act, you extrapolate from that and say Congressman Myers was encouraged to play-act. Congressman Lederer was encouraged to play-act. Is that not the way you come to that conclusion?

Mr. **Plaza**. No. I say no such thing, sir. I do not know whether he was encouraged to play-act or not. I do say this. [52] The jury should have had available to them——

Mr. **Neal**. You say more than that, Mr. Plaza. You say that agents of the Government deliberately, deliberately in order for the full record not to be made, deliberately decided not to make a memorialization of the full matter of Abscam. And you say that Abscam from beginning to end is a perversion of the truth.

Now, you are not saying merely that there is some evidence that A, B, and C were encouraged to play-act and, therefore, one might infer possibly that D was encouraged to play-act. You are saying it is a perversion of the truth.

Mr. **Plaza**. A distortion, yes, sir.

Mr. **Neal**. I have no more questions.

Senator **Mathias**. Mr. Plaza, I want to be sure I understand what you think the real motivations were behind this distortion. I gather from what you have told us this morning that at least one of the motivations that you see is that it turned into a profitmaking scheme for Mel Weinberg and for Errichetti. They could write a scenario that would have a prophecy in it and then they would fulfill the prophecy. Is that part of it?

Mr. **Plaza**. That was certainly part of their motivation, yes, sir.

Senator **Mathias**. Do you think that kept them going? Did it give them a reason to keep the scenario ongoing like a soap [53] on

TV, where the plot has to go from day to day in order to keep it rolling?

Mr. PLAZA. Well, there are a lot of reasons for it, sir. First of all, during that period of time they lived like millionaires. I am talking about Weinberg: Lear jets, chauffeur-driven limousines, the finest kind of hotels, townhouses, and so on.

Senator MATHIAS. I do not want to interrupt you, but we were told yesterday that in the early stages he had a $1,000 month salary.

Mr. PLAZA. That is an interesting point. That is one of the things which caused me to write the memorandum, once again, within Department of Justice channels with regard to the false testimony. I will just relate this incident. In May of 1980 we were down in Washington—by we, I am talking about Bob Weir and I—and there was a group of other attorneys. We were interviewing Weinberg and the agents. Irvin Nathan asked Special Agent Good about the compensation of Mel Weinberg. And Special Agent Good related to him how he was making $1,000 a month initially and then $3,000 a month after he brought MacDonald in on the MacDonald-Errichetti case. And then he also related to him that he got $15,000 for bringing MacDonald in.

Subsequently, we reviewed some transcripts of some [54] testimony, and this is before Judge Fullman and then before Judge Pratt. And before Judge Fullman they submitted—and I am talking about the FBI agents—a schedule of payments that Weinberg was supposed to have received. And there was not any kind of reference to any $15,000 on that schedule of payments. Before Judge Pratt there was a new revised schedule of payments, and now there was a $15,000 payment. But they insisted it had nothing to do with bringing in any individual. The defense attorneys in that case were attempting to make the argument that Mel Weinberg was in fact a bounty hunter and that he was being paid to bring people in before the cameras. The Government absolutely insisted that that was not the case.

You really should review the testimony. As a matter of fact, Judge Pratt even volunteered how it had nothing to do with that—the Government showed him a document—and that that $15,000 was unrelated. Of course, we had been told that it was $15,000 specifically for bringing MacDonald in.

Now, if you consider the fact that we have come to the conclusion that there is evidence that MacDonald was duped into coming into this situation, and if Weinberg was paid back in 1979 for bringing MacDonald into the case, then it motivated Weinberg to bring other people into the case. If MacDonald was duped by Weinberg, then Weinberg had nothing but a further incentive to [55] bring other people in under the same circumstances.

So, that became a very relevant fact. I am sorry I digressed, but, hopefully, I have tried to answer your question.

Senator MATHIAS. I think it is important to pursue because the question, of course, recurs. If Weinberg was being rewarded for bringing in criminals, people who were already engaged in criminal activity, that is one thing. If he was being paid as a script writer for constructing scenarios that encouraged crime, then that seems to me to be something else. Is your testimony that it is the latter?

Mr. **Plaza**. I do not believe that the FBI paid Melvin Weinberg $15,000 believing that they were viewing a script. I think Melvin Weinberg scammed the FBI and produced something as if it were the real thing when there was some real evidence that it was a script. The FBI, in reliance on it being the real thing, rewarded Melvin Weinberg for it. As a result of that, I think Melvin Weinberg was anything but precluded or was, in fact, rewarded and induced to continue that kind of conduct. He was not being precluded from doing it. He was not being punished as a result of the MacDonald scenario. He was getting $15,000 for MacDonald.

Now, I am not suggesting for a second that the FBI rewarded knowing that this was a script. I think the FBI [56] was deluded into believing it was the real thing. And perhaps it was the real thing, but I tell you that there is evidence that it was a script.

Senator **Mathias**. So, you do not see this as a sinister plot on the part of the FBI or an insensitivity to constitutional principles or to lack of due process but that they were simply incompetent to the extent that they did not see through what was happening?

Mr. **Plaza**. Incompetent, you know, has certain connotations to it.

Senator **Mathias**. Well, incompetent in this narrow sense.

Mr. **Plaza**. I think Mel Weinberg scammed the FBI.

Senator **Mathias**. We have a vote on the Senate floor. We will take a 10-minute recess. At the conclusion of that, Senator Huddleston will begin his questions.

[Recess taken.]

Senator **Mathias**. The committee will come to order. Senator Huddleston.

Senator **Huddleston**. Thank you, Mr. Chairman. Mr. Plaza, let me say that I think you have made a substantial contribution and service to this whole area by raising the questions that you have and in the manner in which you have. It will be very helpful to this committee in trying to sort out all of the aspects of undercover operations and will help make sure we devise a mechanism that is effective and at the same time does [57] give consideration to innocent parties and to the rights and privileges of our citizens under the Constitution and under the law.

You are familiar, I am sure, with the guidelines that have been established by the FBI.

Mr. **Plaza**. I am not, sir.

Senator **Huddleston**. You are not familiar with those?

Mr. **Plaza**. I do not believe I have ever seen them, sir.

Senator **Huddleston**. Is it a matter of interest to you? Do you believe that there should be some guidelines and that they ought to be followed?

Mr. **Plaza**. Yes, sir.

Senator **Huddleston**. One of the requirements in their guidelines is that undercover operations will be permitted in problem areas of crime activity, or some phrase to that effect, or ongoing crime activities. Do you believe that situation was indicated when this particular undercover operation made the turn from its original intent toward political corruption and, more specifically, toward dealing with Members of Congress?

Mr. PLAZA. I do not know. That is dfficult to answer, sir. If you are going to restrict it to the Angelo Errichetti and his telling Weinberg whom he knows, it is difficult, once again, to assess whether he knew these people were involved in any kind of corruption and whether in fact he had been corruptly involved with them beforehand. I do not know. And that is [58] part of the problem. And that is part of the problem creating these scenarios—fool the sheik and fool McCloud and fool his representatives. You do not know when the people mean what they are saying under those circumstances or whether it is part of the play acting. And that is the distortion and that is the perversion.

Senator HUDDLESTON. You have indicated that there is some evidence that the play acting part or the scam within the scam may have existed?

Mr. PLAZA. Yes, sir. I think there is some evidence that it did exist.

Senator HUDDLESTON. Does it make a difference, in your judgment, to the propriety of entering into a particular undercover operation directed at a particular class of people whether that activity was originated by Weinberg or whether it was originated by thoughtful consideration by the Department of Justice or FBI?

Mr. PLAZA. Well, it makes a difference whether the Government took the initiative in this case or whether it was something that was brought to the attention of the Government by nongovernment people. The courts have focused on that difference. I know the *Twigg* case was focused on that difference, whether it was something that was initiated by the Government or whether it was initiated by the outsiders. Now, whether it was initiated by the Justice Department or by [59] Weinberg, I think it is important that the Justice Department knows and knew what was going on while it was happening. I think that they did not know what was taking place as it was going on, did not know the true reality of what was taking place.

Senator HUDDLESTON. Do you see a difference in directing law enforcement resources toward ongoing crime situations where there is no question that crimes have been committed and in directing them toward creating a situation where crime might be committed?

Mr. PLAZA. It makes all the difference in the world, absolutely, sir. Philosophically it makes all the difference in the world, whether or not you are detecting crime. I do not think it is very secret that the general public, unfortunately, feels that political figures are corrupt. Therefore, for people to say, we were just trying to detect what is taking place already, is unfair. Because, if you were to ask most people out on the street, unfortunately you would hear from them that political figures are corrupt. Then to say simply, well, we knew it was going on, all we are doing is trying to root it out, I think is unfair.

The real problem of Abscam is, in this case it was politicians, all right? To my mind at least, there is no one who is better able to defend himself than the people who were the targets in this case. They have influence. They have [60] power. They have money.

But what happens when you zero in on some small businessman somewhere? And the same techniques that were used against political figures can be used against anybody: the selective kind of recording, the creation of the appearance of criminality. And that is the real concern, the real fear.

Senator HUDDLESTON. I appreciate that statement. I think it reflects the attitude of every member of this committee. We say over and over again, and I guess it always bears repeating; we are not trying to apologize or make excuses for any Member of Congress or anyone that got caught.

Mr. PLAZA. Could I just say this, Senator, because I think it is important. My views and Mr. Weir's motives have been questioned throughout these proceedings. Both Mr. Weir and I feel, and we have represented it time and again in the writings during the course of Abscam, that the conduct of the political figures that were brought before the Abscam cameras was reprehensible; it was unethical; it was improper. They were not acting on behalf of constituents, and we do not hold any brief for any one of them. The real issue is whether or not the Government's conduct was any better. And I do not think it was.

Senator HUDDLESTON. I think that says, better than I have been able to, precisely what this is all about. I appreciate your making that statement. There was an exception or two [61] about the people who were brought before the camera.

We went into great depth with other witnesses about how much of an imposition it is or a violation of a person's constitutional rights or at least his right of privacy to have a mechanism in place where a perfectly innocent person could at least be brought before surreptitious cameras and be put in a position of being offered a bribe even though the so-called fail-safe mechanisms might have prevented the bribe from actually being offered after the agent on the scene recognized the fact that the man was there unaware. But just the fact that he could be brought that far, any citizen, not just a Member of Congress, any citizen, on nothing more than the representation of a corrupt middleman that he would take a bribe.

Is that to you going too far?

Mr. PLAZA. I do not think you even had that here, though, sir. That is the important consideration. You did not even have that here. I do not believe that in all of these instances you had—certainly, I was not satisfied that you had it, in any event. What you had was the Government informant representing what the middleman said he said to the political figure. As I said before, and I think it was in response to Mr. Wheeler's question, I have not really thought out what additional requirements there should have been. If there should have been additional requirements, I must honestly state [62] to you that I did not indicate that there should have been any. I simply stated time and time again during the course of Abscam that there should have been a reasonable suspicion. A reasonable suspicion to me would have been a verifiable statement from a middleman, verifiable in the sense it was documented, it was on tape, that I have spoken to Senator X or Congressman A and he does know he is coming in for a bribe, and he is willing to take the bribe. And then I set up some additional requirements just to make certain that you did not have this kind of vagueness.

Those requirements were that that individual was going to have to state on camera—I am talking about the political figure—that he was going to perform an official act and that he was actually going to have to perform that official act. On camera he was going to have to make clear that he understood he was getting the money, because with some of these figures it was unclear that that was taking place.

I'd try to set up some additional requirements with regard to that as well.

Senator **Mathias**. If you would yield on that point.

Senator **Huddleston**. Yes.

Senator **Mathias**. You say you thought there should have been a reasonable suspicion. Who was it in the Justice Department that said that was not necessary?

Mr. **Plaza**. Mr. Nathan advised us that there was no such [63] requirement necessary.

Senator **Mathias**. Did he quote anybody else on that or did he do that on his own authority?

Mr. **Plaza**. I do not know who he was quoting, but I know that that was his statement.

Senator **Mathias**. Thank you.

Senator **Huddleston**. I think we have demonstrated that, even with the guidelines as they are now, and some of them evolved during the Abscam operation itself, even with those guidelines, you do not have to make a finding of a reasonable suspicion. And, in fact, none was made. You operate only on the representation of a corrupt middleman where you cannot confirm in any way whether or not he has done what he has said he has done, whether he said what he said he said to the individual involved. So, it seems to me that is a serious flaw in the operating mechanism that is in place at the present time.

Thank you, Mr. Chairman. My time is up.

Senator **Mathias**. Senator Rudman?

Senator **Rudman**. Thank you, Mr. Chairman. Mr. Plaza, yesterday I asked Agent Good and the prosecutor from New York, Mr. Puccio, why you were refused the right to talk to Mr. Weinberg alone on the 18th of June, 1980, when you made the request. Their answer was that it was true that you were refused, with Mr. Weir, the opportunity to interview him alone, but the reason was that they had all come to Washington to [64] discuss a whole range of other cases and matters, and they were not prepared to discuss that particular matter under those circumstances.

Do you agree with that?

Mr. **Plaza**. No, sir.

Senator **Rudman**. They also told us that you were told that you could interview him alone at some later date.

Mr. **Plaza**. It never happened, sir.

Senator **Rudman**. Are you telling me that the testimony here under oath yesterday by Mr. Puccio—well, this would be by Mr. Good, was perjury?

Mr. **Plaza**. I cannot say that. It means that——

Senator RUDMAN. Let me just stop you right there. Let us hone it in just a little bit tighter here. Is it true that you made a request along with Mr. Weir to talk to Mr. Weinberg alone?

Mr. PLAZA. No, sir.

Senator RUDMAN. That is not true?

Mr. PLAZA. No. There is a memorandum with regard to this dated June 19, 1980. I wonder if Mr. Wheeler has that memorandum. Do you, sir?

Mr. WHEELER. We will check for it. I think we do.

Mr. PLAZA. That memorandum will very accurately reflect precisely what took place at that meeting. But let me see if I can apprise you, sir, of what did take place. Prior to that [65] meeting, first of all, we came across the Rosenberg situation and the problems that that created. I am talking about how Mr. Weir and I had detected that. We detected the DiLorenzo situation, we interviewed DiLorenzo, and it was the gift situation. We were seeing indications of a scam within a scam on the MacDonald case. We expressed that to Mr. Nathan in the presence of Weinberg and Good on May 14 down here in the Department. Mr. Nathan asked us: "Do you have any problems with the MacDonald case?" And I told him in the presence of Mr. Good and Mr. Weinberg the problems that I had and the fact that there might have been a scam.

We had also been asking for telephone toll records. We asked it in writing. It was sent down to the Department. We had asked to speak to Special Agent Fuller and were told by Mr. Sharf that there was a problem with regard to speaking to Fuller. Fuller was the man who subsequently had the 302 which contradicted everything that we had previously been told with regard to the Angelo Errichetti CD's.

All of these things were coming together. We went down to Washington. We spoke to Rosenberg on June 17. Rosenberg told us about the CD's. We were supposed to speak to Weinberg on June 18. Weinberg came in with Special Agent Good and Mr. Amoroso. They came in late. We were supposed to meet them early that day.

It was Mr. Adelman who was the prosecutor who was handling [66] the case down here in Washington who had invited us to come down to be present during the course of his interview of Weinberg. It had all been agreed on June 17 that we would ask Weinberg about CD's. We would ask him about the Rosenberg statements. We would ask him about the DiLorenzo statements. But Mr. Adelman told us he was going to interview Weinberg alone. It was Adelman who suggested that Weinberg be interviewed alone.

I said to Roger Adelman: "Look, let's not upset the FBI with regard to this; interview Weinberg outside of the presence of other potential witness agents"—and Amoroso and Good would have fit that particular role—"but let's interview him in the presence of some FBI nonwitness agent." Adelman thought that was a good idea. We then met with Weinberg and with Amoroso and Good. It was Adelman who proposed to interview Weinberg outside of the presence of Amoroso and Good.

Senator RUDMAN. Are they refused?

Mr. PLAZA. And Amoroso and Good started screaming—first of all, they said no, they were not going to do that. That went on for several minutes. They were not going to permit Weinberg to be interviewed outside of their presence. When I asked them what's wrong, it is then that Good and Amoroso started to scream that I was the enemy in this case and I had been talking about entrapment and due process and was looking somehow to destroy this case. But it was Mr. Adelman who [67] asked to speak to him outside of Amoroso and Good's presence.

At the end of that meeting, after it was clear that it was impossible for us to stay under those circumstances, Mr. Good said to me: "Make an appointment, make an appointment; if you want to speak to us, make an appointment." It was never indicated to us that we could speak to Weinberg alone.

Senator **Rudman**. Let me ask this, Mr. Plaza. It has always been my understanding in all of my law enforcement background, working with the Department of Justice and the FBI, that in the final analysis U.S. attorneys in this whole scheme of law enforcement were in charge. If the U.S. attorney on a particular case said: "This is the way it's going to be done, and we're going to talk to this witness, and you're not going to be here," then that is what would happen. Is it somehow different in this case? Or is my understanding incorrect?

Mr. **Plaza**. All bets were off with regard to a great many things in Abscam, and this was one of them.

Senator **Rudman**. Am I correct or incorrect that in your prior experience in the U.S. attorney's office that, when in fact you wished to speak to a witness alone or do something, if you told an FBI agent in charge that that is what you were going to do, unless he could get you overruled by the Department of Justice, that is what you did?

Mr. **Plaza**. That situation never came up. It was just [68] understood that you could talk to people alone. I never had to tell an agent: "Leave because I'm going to speak to a man about certain things." I never had the impression before that agents were looking to be protective with regard to the truth coming out from a witness.

Senator **Rudman**. And you found in this particular case that the eastern district and the agents working in this case were, I think by their own testimony here, very protective of Mr. Weinberg and all the information that he developed?

Mr. **Plaza**. Yes, sir.

I indicated to Mr. Wheeler before there was a memorandum that reflected what took place——

Mr. **Wheeler**. Excuse me, Mr. Plaza and Senator. We do have that memorandum. It is one of the confidential documents we have been provided. Mr. Plaza's testimony essentially tracks what is in this memorandum.

Mr. **Plaza**. I think it is a three-page memorandum. On the third page of that memorandum I demanded, along with Mr. Weir, because this was a memorandum from both of us, to be taken off the Abscam case. Now, there is a little addendum to that memorandum. I think it is dated the 20th. I read that memorandum word for word over the telephone to Mr. Adelman. I think Mr. Spivack may have been listening as well. In the beginning of that memorandum, I think I indicated we were requested to come down to

Washington. Mr. Adelman quarreled [69] over the word, I believe, "requested." And we settled on the word "invited" instead of "requested." That is how precise that memorandum is.

Senator RUDMAN. Let me ask one other question, Mr. Plaza. In testimony relating to the guidelines that now exist, and those guidelines are supposedly built on procedures that preexisted their publication, it is evident that it is the position of the Department of Justice and the FBI that, if a corrupt middleman makes an allegation about a public official, then that is sufficient to authorize a bribe being paid to that public official. The ultimate safeguard that the FBI and the Justice Department claim exists is that, when the person is brought in, if in fact all the preexisting conditions were not met, if they were lied to by the middleman, then it becomes apparent to the operatives; and at that point they are instructed to back off. And they give as their prime example of the system working the Pressler case.

Aside from those questions of constitutional rights and privacy and invasion of people's privacy and destroying their reputations, just putting them aside for a moment as if they did not exist, you mentioned that you would like to see more corroboration and verification. What you are essentially saying is that the upfront guideline is not adequately implemented. Is that correct?

Mr. PLAZA. I do not know if that is what I am saying, [70] sir. I am saying that, with regard to Abscam, I did not see evidence that the middleman had clearly communicated to the politician why he was coming in. There was no tape. At least in certain instances——

Senator RUDMAN. Well, he may have. But what you are saying is you had no way of knowing that.

Mr. PLAZA. And we demanded that. That is, once again, reflected in the Stewart memorandum.

Senator RUDMAN. That is the point I am getting to. Obviously, there was a different standard applied in the New Jersey U.S. attorney's office under Mr. Del Tufo and the situation which existed in the eastern district.

If I understand you correctly—and I think this is the crux of much of what we have been talking about here—you would not rely on the unsubstantiated allegation, without any kind of corroboration of a statement of possible corruption on the part of a middleman, by itself. Is that correct?

Mr. PLAZA. That is not truly correct, sir, because I would have relied on—if, for example, Mr. A, he is the middleman, Mr. A says I am going to bring in Congressman B, and Congressman B knows that he is coming in to receive a bribe, and Congressman B is going to take $50,000. And let us say that is in a tape, a tape which I as the U.S. attorney have then reviewed.

Senator RUDMAN. A tape between the corrupt middleman and [71] who else?

Mr. PLAZA. The corrupt middleman and the Government agent, informant.

Senator RUDMAN. All right.

Mr. PLAZA. What I am saying is that—and perhaps there should be more, but we required at least a review of that tape to make certain that the middleman was communicating to Weinberg that the congressional figure understood he was coming in for a bribe.

We did not have that. What we have in this case instead was the uncorroborated word of Weinberg that he had spoken to the middleman and that the middleman said the Congressman is coming in. And on many occasions the uncorroborated word of Weinberg was simply false. After we got a transcript or after the fact, we found out that it did not happen that way.

Senator RUDMAN. Essentially, when you take all of your testimony together, your testimony before the Edwards Committee and what you have said this morning, if I can characterize your testimony, I think what you really believe is that the FBI and the Justice Department in this case were really attempting in most cases to do the right thing but that Mel Weinberg, to put it rather bluntly, was smarter than all of them, that he found a way to scam them all.

Mr. PLAZA. I do not know if he was smarter than all of them, but I do think that Mel Weinberg did scam the Government; [72] yes, sir.

Senator RUDMAN. And he developed a methodology of bringing people in who, if not known to be corrupt, certainly did turn out to be corruptible, no question about that.

Mr. PLAZA. Yes, sir.

Senator RUDMAN. But he managed to do this because, in your view, he was sharing in some of or all of these bribes.

Mr. PLAZA. In some, in some. And, once again, it is difficult to determine where the illusion ends and the reality begins when you look at some of these different scenarios that Mel Weinberg put into effect. If you believe that there is evidence, as I do, that these CD's, for example, were put into the marketplace by Mel Weinberg, then, when the recovery comes in and you are told about these enormous recoveries, a fortune in stolen CD's, you assume that that is the case. And there is evidence that it did not happen that way.

Senator RUDMAN. Well, that is a lot like the cases that have been known and indicted and proven where you have had agents plant drugs and then discover them and then take responsibility for a bust. It is the same kind of thing.

Mr. PLAZA. It is not quite that bad because, as it turns out in this case, they did not prosecute those people for the recovery of those [73] forged or stolen CD's. But the important thing here is that additional funding for Abscam came along at really difficult times because of the alleged recovery of these forged or stolen CD's, enough to take a look at the chronology of Abscam. The congressional figures started, I think, with Myers around August 1979. Before that, all you had was a lot of unsubstantiated kind of stuff with regard to Williams. You had this claim of $100,000 going to MacDonald, which I think also has got some problems with it. But the congressional figures did not start getting into this case until August and then really started to move along at the end of 1979.

Yet, this was a fairly expensive kind of project for the FBI. So, at difficult times, March 1979 and before, you had these enormous recoveries of CD's. And this is what provided additional funding and, we were told, bonuses for Mel Weinberg.

Senator **Rudman**. So, what you are saying is producing these CD's gave Weinberg more credibility, helped get the request for more funds approved——

Mr. **Plaza**. Absolutely.

Senator **Rudman** [continuing]. Almost as if Weinberg found a way to get continuing interest in the operation he was involved in.

Mr. **Plaza**. That is part of it, yes, sir.

Senator **Rudman**. I have just one brief question. You stated that the submission to the judge in terms of Weinberg's compensation was not accurate. We have been told that he received something like $240,000 or $250,000 over a 3-year period. Are you aware of that?

[74] Mr. **Plaza**. It depends on which schedule you look at and at what time. I do not know what it is.

Senator **Rudman**. Mr. Chairman, one thing I think we ought to have for this hearing, for these scheduled hearings before we are done is, for the record, a detailed list of the compensation paid to Mr. Weinberg. We have had some conflicting testimony. I do not understand how $1,000 a month and $2,000 a month multiplied by 36 or 40 can get up to $250,000 and yet that is what we have had here for testimony. I wonder if we might make that request to get that. It might be an interesting part of the record.

Senator **Mathias**. Mr. Neal?

Mr. **Neal**. Mr. Chairman, Senator Rudman, we have already made that request. We have been advised that a detailed accounting of all compensation paid by the Government to Mr. Weinberg will be forthcoming. We have not received it as yet.

Senator **Mathias**. Mr. Plaza, just so your testimony will be intelligible to those who may read it without having read all of the rest of the record, would you identify Mr. Adelman and Mr. Spivack?

Mr. **Plaza**. Yes. Mr. Roger Adelman is an assistant U.S. attorney in the U.S. attorney's office in Washington, D.C. Mr. Spivack is, to my knowledge, still an assistant U.S. attorney in Washington, D.C., as well.

Senator **Mathias**. Senator Inouye?

[75] Senator **Inouye**. Thank you very much. Mr. Plaza, I am certain you are familiar with the document dated November 27, 1979, entitled "FBI Internal Memorandum from Section Chief W. D. Gow to Assistant Director in Charge, Francis Mullen, Junior?"

Mr. **Plaza**. I saw that document for the first time in the Congressional Record. Yes, sir, I am familiar with it.

Senator **Inouye**. This is a memo that covers a meeting that was held on November 19 attended by seven U.S. attorneys or assistant U.S. attorneys and seven members of the Bureau. I note that you, Mr. Plaza, and your associate, Mr. Weir, were in attendance.

Mr. **Plaza**. That is correct, sir——

Senator **Inouye**. Were you in attendance there?

Mr. **Plaza**. Yes, sir.

Senator **Inouye**. The memorandum, as you know, says:

> Relative to the matter concerning U.S. Senator Harrison Williams of New Jersey, the following was decided. It will be necessary to recontact U.S. Senator Williams in an attempt to obtain an overt action on his part regarding his sponsoring of some type of legislation, that is, tax cover for titanium mine, environmental standards for titanium mine, and/or import quotas for titanium mine. Two, it is also suggested

that attempts should be made to elicit from U.S. Senator Williams whether or not he wanted his shares hidden, through discussions concerning reporting of personal taxes and official acts that [76] he promised to provide. If the above information is obtained, prosecutors at the meeting felt that they could prove that Senator Williams was in violation of title 18.

At this meeting were you prosecutors or seven attorneys convinced that you did not have a case against Williams as of that moment?

Mr. PLAZA. I believe that we did not have a prosecutable case as of that moment. I believed that a month later. I still believe that. When I wrote the so-called Del Tufo memorandum along with Mr. Samuel Elito, who is presently a member of the Solicitor General's Office, and with Mr. William Braniff, who is an assistant U.S. attorney in San Diego now, I still believed that Senator Williams was entrapped.

That view, however, was not shared, in my opinion, by other people there, including Mr. Puccio. I know that Senator Williams' position would be enhanced if that was in fact the case; but I tell you, based on my recollection of that meeting, Mr. Puccio believed that he had a prosecutable case on that occasion.

Senator INOUYE. Then why did the memo say that, if the above is obtained, the prosecutors felt that they could prove that Williams was in violation?

Mr. PLAZA. I do not know, sir. I know I raised a whole [77] series of concerns with regard to the Williams case during the course of that meeting. I went through, oh, whether or not this was an official act and whether he was being induced to say certain things. I went through a whole series of things. I can even recall there was a discussion about how they might be able to put together an official act, and I said something and maybe even suggested an official act and said: but that's not going to solve your problems because you have so many of them in this particular case. But Mr. Puccio felt that he had a viable case, is my opinion of his position at that meeting.

Senator INOUYE. He was in charge; was he not?

Mr. PLAZA. When you say in charge, sir, he was certainly not my superior. He was, I would say, the man that the FBI looked to most often with regard to certain aspects of the Abscam case. But there were memorandums from the Department of Justice which made clear that in certain areas we were in charge; I am talking about the U.S. attorney's office. At least we were supposed to be in charge. As a matter of fact, that was the big concern of Mr. Stewart, who was even appointed case attorney, whatever that meant. His concern was that he had all of the responsibility but in fact none of the prerogatives of being in charge.

I am sorry if I was long winded in that answer, but there was no one specific individual who was in charge at that meeting because I do not think anyone from Washington was [78] there; that is my recollection in any event.

Senator INOUYE. Are you familiar with the meeting held in the Plaza Hotel on January 15, 1980, where Senator Williams was invited to meet with the sheik?

Mr. PLAZA. Yes, sir.

Senator INOUYE. At that meeting the first bribe offer was made, I believe. In the whole year of events, this was the first time that a cash bribe was suggested. The tape transcript indicates that Senator Williams responded by saying no four times. Then suddenly Mr. Amoroso rushes in right in the midst of Mr. Williams' explanation and the phone rings. Do you know why Mr. Amoroso rushed into that room?

Mr. PLAZA. I do not know, sir.

We did not know, by the way, about that meeting beforehand. We obviously did not authorize it. We felt—I am talking about we in the U.S. Attorney's Office in the District of New Jersey—rather strongly about that case and the problems that it presented.

We saw that videotape, I guess, shortly after January 15. We were told that the people in the Eastern District of New York felt that that was a very incriminatory tape. We felt absolutely to the contrary, that, in fact, it was an exculpatory tape. And I am looking for some reference among my notes here with regard to that meeting. I think there is a January 16th Weir memorandum which reflects our position with regard to [79] that meeting.

But I do not know. I was never told why Special Agent Amoroso came in.

Senator INOUYE. I would like to follow up where Senator Rudman left off. Yesterday, as proof of the workability of the guidelines, the witness pointed to the Pressler case as a classic example that, when Senator Pressler refused to take the bribe, everything folded. Let us assume that all the facts are the same, that there is a Mr. Silvestri, that he reports to the agent that Senator Pressler will take a bribe. But keep in mind that Mr. Silvestri has never met Senator Pressler, and he meets Senator Pressler for the first time 15 minutes before entering the front door. And he had never had a conversation with Senator Pressler prior to that day. That Senator Pressler was a candidate for the nomination for the presidency and it was common knowledge that, like all other candidates, he was seeking campaign funds.

Let us assume that Senator Pressler, instead of saying no, had accepted the campaign contribution. And then you later found out that Silvestri had no knowledge or had no contacts, that no meeting had been held. What would you have done as U.S. attorney?

Mr. PLAZA. You are saying that Senator Pressler—let me see if I understand this. Senator Pressler received the money——

[80] Senator INOUYE. Assuming that all the facts are the same with one difference: instead of saying no, he said yes. But you later found out that Silvestri had never met Pressler until 15 minutes before the meeting, that he had falsified his alleged meeting with Senator Pressler, and there was no predisposition of crime being shown, that there is no record of any criminal activity on the part of Senator Pressler, but for some reason he said yes.

Mr. PLAZA. I think you have a prosecutable case, Senator.

Senator INOUYE. Even if he is brought in under false pretenses?

Mr. PLAZA. I think, you know, this is the difference between, I think, Abscam and what I would have liked to have seen.

I think you have got a prosecutable case, but what you do as a responsible prosecutor is bring out all of the facts surrounding that meeting. And then you let the courts determine whether Senator

Pressler was entrapped or whether his due process rights were violated.

Senator INOUYE. After that meeting, knowing the facts, would you have used Silvestri again?

Mr. PLAZA. Difficult question. I would like to say no, but I do not know.

Senator INOUYE. I was not here for about 45 minutes, so I am not aware if you have responded to this question. But in [81] the initial opening Mr. Wheeler said that the ultimate question will be what do you recommend legislatively that can or should be done to prevent abuses that you speak of.

Mr. PLAZA. I think my answer to that question, at least my position, would be that there are adequate safeguards. I do not think you can legislate morality. I do not think—for example, there is something called the Brady Rule; prosecutors must bring exculpatory evidence to the attention of the courts. There are sanctions when they do not do that. There are sanctions if people provide false testimony. You have all of those sanctions in place.

I do not know how you act when people do not comply with the rules which are already in place. I think, as I said, there are adequate safeguards. What do you do when people do not observe them? I do not know.

Senator INOUYE. Finally, was it the attitude of many of those in charge of the operation that most, if not all, of us were ultimately corruptible?

Mr. PLAZA. I cannot answer that question, sir. I do not know.

Senator INOUYE. Thank you, sir.

Senator MATHIAS. Let me follow that last question with just this inquiry. It is your contention, as I understand it, that the asylum scenario was the invention of Mel Weinberg?

Mr. PLAZA. I say, sir, that there is evidence that it was [82] Government initiated. Whether it was Mel Weinberg or, as he told me, he along with an agent, who put it into effect, I do not know, sir. But I do believe, based on the evidence that I have seen, that it was Government initiated; even though it was made clear to us initially that it was not, it was something that we were told had been put into effect, in the first instance, by, I think, Howard Criden or Angelo Errichetti. Later on, we got a substantially different version of that.

Senator MATHIAS. Does it matter who invented it if in fact it went through the whole process of review and approval in accordance with some established procedure in the Bureau, in the Department?

Mr. PLAZA. I think it matters to the courts who initiated it. I know we were not happy with it, and we made it very clear that we were not happy with it. Once again, I think Mr. Stewart communicated that in one of his memoranda to the Department.

Senator MATHIAS. So that——

Mr. PLAZA. Sir, we did not have—when you work for someone or for a agency, if you have philosophical differences with your employer, you raise them and then, so long as you employer acts properly, even though you do not agree with him, you do one of two things: you put into effect what your employer wants you to do or you leave. These are not philosophical differences which I ultimately had with Abscam. We [83] are not talking about differences in approach or in technique. We are talking about whether or not the government presented these cases to the courts truthfully so that the courts could make a determination. They are in a far better position than I am to determine whether people were entrapped or whether their due process rights were violated. That is a court's determination. I do not have any right to go before any court or before any administrative body or congressional body and complain about philosophical differences with my employer. But not only do I have a right but I have an obligation to come forward when they are not being presented truthfully.

It is really bootstrapping of the worst kind to point to court decisions and say: Look, all of these things have met with court approval. Look, you know, Judge Pratt has approved it. The second circuit has approved it. The third circuit has approved it.

It is like suppressing a confession. Even if the man is guilty, if the courts do not know it, they cannot weigh it in order to make a determination of whether an individual was entrapped or whether his due process rights were violated. And that is why we came forward in the first instance within the Department of Justice internally. And it was the Department of Justice which brought it outside.

Senator Mathias. So, you think if, in fact, the scenario had been developed by Weinberg—and you say there is evidence [84] otherwise—but if it had been, that that would have tainted the operation even though it had been subsequently reviewed and approved within the Department?

Mr. Plaza. No, sir. I think whatever Weinberg did, whatever any Government agent did, if that were accurately presented to the court, whatever it was, whether Weinberg received gifts, whether Weinberg received CD's, whatever it was, then I think the judicial process has the opportunity to review and make an appropriate decision. The judges then say this was entrapment or a person's due process rights were violated. I do not think that happened.

Senator Mathias. I think I now understand you. Whatever happened, how it happened, and how it was motivated should have all been presented.

Mr. Plaza. It should have been presented accurately and truthfully——

Senator Mathias. And comprehensively.

Mr. Plaza. Yes, sir, within whatever requirements the law imposes upon a prosecutor.

Senator Mathias. That is helpful. Thank you. Senator Huddleston?

Senator Huddleston. Mr. Plaza, have you been involved in other undercover operations?

Mr. Plaza. Yes, sir.

Senator Huddleston. It has been represented to this [85] committee by members of the FBI that Abscam was the most closely surveilled and supervised undercover operation that they had engaged in and that Mr. Weinberg himself was the most closely supervised, cooperating, underworld middleman that they have dealt with. Do you agree or disagree with that?

Mr. **Plaza**. Well, if you mean by closely supervised the greatest number of supervisers reviewing it and, unfortunately, applauding it, that may very well be the case.

If you mean by supervised being aware of what was taking place and being able to truly influence what was taking place, I would disagree.

Senator **Huddleston**. Would you also disagree with the operation as a whole being the most closely supervised?

Mr. **Plaza**. Sir, that, I think, is a determination that you will make once you have all of the evidence presented in front of you.

Senator **Huddleston**. In a normal—well, I guess, maybe there is no such thing as a normal undercover operation. I am sure they all have their own peculiarities and differences. Have you encountered any in which there was less direction from the authorities themselves as to the direction that the operation took or less direction to the cooperating middlemen as to the actions they took?

Mr. **Plaza**. In fairness, I was never involved nor do I think anybody else was involved in anything of the dimension [86] of Abscam. I was involved in undercover operations when things were closely controlled, when there were tapes made of different meetings. When tapes were not made, there were documents which would corroborate what took place at those meetings. Abscam, I think, was unique and really an aberration based on my experience, and that was over a 9-year period with the U.S. attorney's office.

Senator **Huddleston**. Do you believe that in undercover operations, and particularly those in which innocent third parties may be ensnared, in which there may be financial loss to innocent third-party people because of the operation, in which there might even be violence, that the operating mechanism and the safeguards put into the guidelines ought to go beyond what is a minimum necessary as far as prosecuting the case in court is concerned?

Mr. **Plaza**. Absolutely, sir. My position has always been—for example, all you need in order to get an indictment before a grand jury is probable cause. I have always felt that, unless I was satisfied that I would be able to prove an individual guilty beyond any reasonable doubt, I would not seek an indictment in a case. I think the same thing can be said in these other areas. When you talk about the potential for violence and the potential for injuring innocent parties, obviously you have to take all sorts of precautions to avoid that from happening.

[87] Senator **Huddleston**. Thank you, Mr. Chairman.

Senator **Mathias**. Counsel?

Mr. **Wheeler**. I have one final question, Senator, just to clarify the record. Mr. Plaza, again going back to the point where we began, your general conclusions refer to an illusion of criminality and a perversion of truth. In response to some of the Senators' questions, you have suggested that one of the principal problems you perceive is that the facts were not presented to the courts—and I assume that includes to the juries—for their determination.

I want to tell you that our understanding, though, is that, as to each of the building blocks that I went over with you in some detail, the principal evidence that we referred to, in fact, was presented to one or more courts at various points in time. For example, Senator Mathias was referring to the September 13, 1978, tape, to the July 14, 1979, tape, which evidenced Weinberg's possible creation of the political corruption aspects and the asylum scenario. Both of those tapes were turned over to the defendants and were incorporated as exhibits in the *Myers* due process hearings. All of the Errichetti tapes, which therefore would apply to the Rosenberg CD issue, to the Errichetti CD issue, to the Weinberg sharing in the Errichetti bribe issue, to the MacDonald bribe-sharing issue, to the Ellis play-acting issue, to the MacDonald play-acting issue, to the Williams coaching session, all of [88] those tapes were turned over before the *Myers* trial, which was the first trial.

All of the principal evidence with respect to the gifts, and with respect to bribe sharing, other than the tapes themselves, was in the testimony of Mr. DiLorenzo, who testified in front of the grand jury in early 1980 and testified at the *Myers* trial, which again was the first trial. So that the defendants were, in fact, very much aware of the principal evidence on which any of these building blocks might have been constructed, and it was up to the defendants to assert a play-acting defense if they thought that one existed based on all that evidence. Yet, the only defendant who asserted a true play-acting defense, that is to say, he was misled into stating certain things where he did not really think the criminal consequences would follow, was Congressman Myers. And the Government's position, of course, is, if in fact these Congressmen and Senators were misled into thinking when they went to the meetings that they were going to say one thing and then something else happened, they would have asserted such a defense in their criminal prosecutions, and they did not.

So, again, that the record is clear, is it not the fact, Mr. Plaza, that all of the principal evidence that we have discussed has in fact been presented to the courts? And, indeed, most of it has been presented to juries and courts in due process hearings?

[89] Mr. PLAZA. No. I do not think that is accurate. First of all, a good deal of the evidence was not presented during the course of the *Myers* trial. The Brady rule requires that a prosecutor bring forward exculpatory evidence during the factfinding process, and that would have been the trial itself. In addition, a great deal of the evidence concerning MacDonald—and that is a case that we looked at rather carefully—to my knowledge, has not been presented in any of the courts. I am not aware, for example, of any of the courts—and perhaps they have seen them—seeing the status reports or the memoranda that were created by the prosecutors down in Washington with regard to the MacDonald case.

I do not believe that the interviews of Weinberg, which are encompassed within those status reports, and his denials of certain things and a great many other things which show him to be an incredible kind of witness, I do not believe those things have been presented to any of the courts. Now, I may be wrong, but I think those very things are the things which have been denied you as well.

Mr. WHEELER. Thank you, Mr. Chairman.

Senator MATHIAS. Are there further questions from any member? If not, Mr. Plaza, we appreciate your being with us. The testimony you have given today is helpful to the committee. I am sure it has not been easy for you. It would undoubtedly have been more comfortable for you to simply have forgotten [90] about this whole business and let it go. You have demonstrated a sense of professional responsibility in speaking out as you have. We appreciate it.

The committee will stand in recess until 10 o'clock tomorrow morning.

[Whereupon, at 12:45 p.m., the committee was recessed, to resume the following day.]

EXHIBIT 15

TESTIMONY OF EDWARD J. PLAZA

See pages 456-481 of FBI Undercover Operations: Hearings Before the Subcommittee on Civil and Constitutional Rights of the Committee on the Judiciary, House of Representatives, 97th Cong., 2d Sess. February 4, March 2, April 1, 22, 29, June 2, 3, 9, July 22, November 23, 1982.

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

THURSDAY, JULY 29, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:11 a.m., in room 318, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias, Huddleston, Inouye, Rudman, McClure, Simpson, and Leahy.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy chief counsel.

Senator MATHIAS. The committee will come to order. Our witness this morning is Mr. John Jacobs, who was the strike force attorney assigned to Abscam in April of 1978.

Mr. Jacobs, have you received a copy of Senate Resolution 350?

Mr. JACOBS. Yes, Senator.

Senator MATHIAS. And have you also received copies of the rules of this committee?

[2] Mr. JACOBS. Yes, sir.

Senator MATHIAS. You will then be aware that all testimony is required to be under oath. If you will stand and raise your right hand, I will administer the oath.

Do you swear that all the testimony you are about to give to this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. JACOBS. I do.

Senator MATHIAS. Do you have a statement?

Mr. JACOBS. No, Senator, I do not. Mr. Wheeler suggested that perhaps I give a little bit of my professional background.

Senator MATHIAS. If you would do that, and then we will have some questions for you.

STATEMENT OF JOHN JACOBS, FORMER EXECUTIVE ASSISTANT, ORGANIZED CRIME STRIKE FORCE, EASTERN DISTRICT OF NEW YORK

Mr. JACOBS. I graduated law school in 1970 and was appointed an assistant district attorney in New York County under the late Frank Hogan. I served as an assistant district attorney under Mr. Hogan for some 5 years, during which time, I tried and investigated cases brought in Manhattan. I was then appointed an assistant district attorney under Robert Morganthal, and served as an assistant district attorney and then senior trial counsel, trying mostly homicide cases, from [3] 1975 through 1977. Upon leaving the district attorney's office of New York County, I was appointed the Executive Assistant, Organized Crime Strike Force, Department of Justice, Eastern District of New York, and I served there for some 4½ years. I left the Department of Justice about 2 months ago and went into private practice with Mr. Roy Kulcsar, who is seated next to me, as my law partner. Mr. Kulcsar and I had served some 6 years together in the Manhattan District Attorney's Office.

Senator MATHIAS. And he is appearing here as your counsel, as well as your partner?

Mr. JACOBS. That is correct, Senator.

Senator MATHIAS. Mr. Wheeler?

Mr. WHEELER. Thank you, Senator.

Mr. JACOBS. I think it would be helpful for you to begin by explaining to the committee how and when you became involved with the undercover operation known as Abscam, and what your responsibilities were in the initial stages.

Mr. JACOBS. Well, I joined the strike force in February of 1978, and within a few months of my joining the strike force, Tom Puccio assigned me to supervise, oh, I would say about three undercover projects that were just getting off the ground floor. One of them was called "Abdul Enterprises." I do not think at that time it was really called "Abscam."

Sometime, I think it was in March, or perhaps April of [4] 1978, I attended a meeting with Mr. Puccio, John Good, Mel Weinberg, and Special Agent McCarthy, at which time it was explained to me that an undercover project was about to begin or had just about been started, utilizing Weinberg and McCarthy in an undercover capacity. It was basically going to be a "sting" operation, where Weinberg was going to purchase art, stolen items. Mr. Puccio assigned me direct responsibility of coordinating the investigation with the FBI, and that is how my role began in Abscam. I think, as I recall, that was the first meeting that any attorneys in the Department of Justice had with the FBI in connection with the case.

Mr. WHEELER. Is it accurate to say, then, Mr. Jacobs, that Abscam in its initial stages, in the middle of 1978, was your case; you were the case attorney in charge of the case?

Mr. JACOBS. Yes, that is correct.

Mr. WHEELER. All right. And you said that you had, you think, three undercover operations assigned to you at that time. Were those the first undercover operations you had ever worked on?

Mr. JACOBS. No.

Mr. WHEELER. You had worked on undercover operations when you were in the district attorney's office?

Mr. JACOBS. Yes, that is correct.

Mr. WHEELER. About how many?

[5] Mr. JACOBS. Oh, probably more than a dozen.

Mr. WHEELER. All right. Now, in those first few months of Abscam, let us say from April 1978 through September 1978, how frequently did you report to Mr. Puccio, and what was the general nature of your reports to Mr. Puccio on this case?

Mr. JACOBS. I do not know if I can really call it reporting. We would chat occasionally concerning the status of all the investigations, and I would make—which I always did—I do not think I ever gave him a written report with respect to Abscam—but in any event, I would chat with him orally every so often.

Mr. WHEELER. When you were first asked by Mr. Puccio to be the case attorney on what is now called Abscam, were you then familiar with the Attorney General's guidelines on the use of informants that had been adopted by the Justice Department in December 1976?

Mr. JACOBS. Not particularly, no.

Mr. WHEELER. When you say, "not particularly," did you know that they existed?

Mr. JACOBS. Yes.

Mr. WHEELER. When you went to the strike force office, did you read them?

Mr. JACOBS. Not that I recall. Not at that time.

Mr. WHEELER. Is there any reason why you did not?

[6] Mr. JACOBS. I do not recall having that brought to my attention at that particular time.

Mr. WHEELER. If you can remember, when was the first time that the existence of those guidelines was brought to your attention?

Mr. JACOBS. Several months later, I recall reviewing them.

Mr. WHEELER. When you first become involved in the case, did you look at Mel Weinberg's informant file?

Mr. JACOBS. No.

Mr. WHEELER. Did you ask for it?

Mr. JACOBS. No.

Mr. WHEELER. Have you ever asked for an informant's file from the FBI?

Mr. JACOBS. Yes.

Mr. WHEELER. Did you have any difficulty getting it?

Mr. JACOBS. At times, I did, yes.

Mr. WHEELER. What was the reason given to you for the reluctance of the FBI to give a strike force attorney an informant's file?

Mr. JACOBS. Well, it depends on the particular case. Many times, an informant's file, which is called, I believe, in FBI terminology, a "137 file," contains a lot of sensitive information, maybe not pertaining to the case that the strike force attorney may be working on. And FBI agents, at least [7] that I found, usually were reluctant to turn that file over unless there was a very, very, very good reason to be given.

Mr. WHEELER. There came a time during Abscam, Mr. Jacobs, when you were the principal attorney in charge of monitoring or keeping track of Mr. Weinberg; isn't that right?

Mr. JACOBS. I would not say that I was ever given the particular function of keeping track of Mr. Weinberg. I certainly was, at one point, the supervising attorney in the field of Abscam, but I never thought my duties involved watching over Mel Weinberg.

Mr. WHEELER. But you spent more time with Mr. Weinberg than any other attorney on the Abscam case; is that accurate?

Mr. JACOBS. Oh, I would say so, yes.

Mr. **Wheeler**. All right. Now, in retrospect, Mr. Jacobs, do you think that it would have been a good idea, and that in the future it would be a good idea, for strike force attorneys or assistant U.S. attorneys who are working on and in charge of undercover operations to review at the outset the informant's file of all the informants who are going to be involved in a particular operation?

Mr. **Jacobs**. Yes; I think it is a good idea.

Mr. **Wheeler**. Do you think that that ought to be in the guidelines?

Mr. **Jacobs**. Yes. I certainly see no reason why it should not be. I always felt that reviewing an informant's [8] file was an important function of the attorney, and even though there may not be any particular material in it, certainly before any type of litigation is under way, I think it is absolutely necessary that the informant file be looked at.

Mr. **Wheeler**. Now, there came a time, Mr. Jacobs, in late 1978 when Abscam changed from the type of "sting" operation that you have described into an operation primarily if not solely aimed at the detection of political corruption; isn't that right?

Mr. **Jacobs**. Well, I think the focus was on casinos more than necessarily political corruption, but certainly the focus changed.

Mr. **Wheeler**. All right. In the last 2 weeks, Mr. Jacobs—and I know you have not been here—but I will tell you that there have been many questions about exactly how it was that that change came to occur; who conceived on the idea of moving into the area of political corruption, and what kind of an approval process was followed. Now, in particular, questions have focused on a conversation between Mel Weinberg and Herman Weiss on September 13, 1978 and another conversation between Mel Weinberg and a Mr. Rosenberg on October 6, in both of which Mr. Weinberg discussed the need for the other individual to bring politicians in.

Do you recall in those latter months of 1978 ever discussing with Mel Weinberg a scenario that would involve [9] bringing politicians into the Abscam operation?

Mr. **Jacobs**. No.

Mr. **Wheeler**. Did you discuss with Mr. Weinberg the use of bringing in politicians in any undercover operation during that period?

Mr. **Jacobs**. Well, Mr. Wheeler, as I explained to you when we talked last week, the Abscam project was located at that time out on Long Island, basically run out of an office at MacArthur Airport, and out of the Hauppauge Office of the FBI. And one of the concerns that I had, and one of the areas that I was interested in Weinberg pursuing throughout all of Abscam was the southwest sewer district project, which was a project that was basically headquartered very, very near the FBI.

Mr. **Wheeler**. Let me interrupt you for just a moment. The southwest sewer district project was another strike force project unrelated to Abscam?

Mr. **Jacobs**. Absolutely, that is correct. And it is a federally-funded project that is still being funded at this time, and John Good's office was working on that investigation at the time, so there was constant talk throughout all the projects that John Good was involved in, of course, moving them into the southwest sewer district project—not particularly politicians—unions, construction work—but certainly, we had information that local [10] politicians may have been involved in possibly illegal activity out on Long Island. But I do not recall any specific conversations that it was going to focus on a particular politican or anything else like that, on Long Island, other than just bringing it up generally. Weinberg had a lot of contacts on Long Island—in the unions, construction people, organized crime people—and it was one of the areas that we wanted Weinberg to move into.

Mr. WHEELER. So, you did discuss with Mel Weinberg during the fall of 1978 the possibility of involving politicians in the southwest sewer district project?

Mr. JACOBS. Sure.

Mr. WHEELER. Did Weinberg at that time—namely, in the fall of 1978—say anything to you, or were you told anything is the fall of 1978, about Weinberg's conversations with Weiss, or about Weinberg's conversation with Rosenberg?

Mr. JACOBS. I recall some of—that I had conversations with Weinberg and the FBI concerning Rosenberg. I do not have a particular recollection on Weiss. I may have had conversations. Most of my conversations in the early stages were through McCarthy, as opposed to direct dealings with Weinberg. But we did have conversations, certainly, about Rosenberg, and the fact that he knew certain politicians.

Mr. WHEELER. Well, there came a time, then, Mr. Jacobs, when Abscam did move into the area of political corruption, [11] and in fact there then followed, as we all know, many video taping sessions in which people were offered, and at least apparently, accepted bribes.

Mr. JACOBS. Uh-huh.

Mr. WHEELER. You were in charge of monitoring several of those different video taped sessions, were you not?

Mr. JACOBS. That is correct.

Mr. WHEELER. How many?

Mr. JACOBS. Well, I probably attended over 10 or 15 of them. I am not certain whether maybe less than a half dozen involved the actual exchange of money. I monitored a number of them that involved the Senator Williams investigation, where there were stockholders' meetings, there were some meetings at the Plaza Hotel involving the southwest sewer district project, which Abscam eventually did move into, which resulted in a recent conviction out on Long Island. But I certainly attended at least 15 of them that I monitored.

Mr. WHEELER. When you say, "attended," though, you mean in an adjacent room, not in the room where——

Mr. JACOBS. That is correct.

Mr. WHEELER. All right. Now, what instructions had you been given before the monitoring began? For example, what was the first one you monitored? Was it the MacDonald meeting?

[12] Mr. JACOBS. Yes; that is correct, but in that particular instance, that monitoring was done, as I recall, on an audio basis from the FBI office. They had a trunkline that ran from the undercover location which was maybe 15, 20 minutes away.

Mr. **Wheeler**. And who was present in the monitoring room other than yourself?

Mr. **Jacobs**. Lawrence Sharf, who was a strike force attorney who worked with me in the field on Abscam; John Good; maybe three or four other FBI agents. I specifically recall John being there. I do not know how many other agents were there at the time. Certainly, Mr. Sharf was there with me.

Mr. **Wheeler**. As between you and Mr. Sharf, who was the senior attorney?

Mr. **Jacobs**. Both of us had the same authority.

Mr. **Wheeler**. Now, what instructions had you been given as to what function you were supposed to perform in monitoring that MacDonald meeting?

Mr. **Jacobs**. Well, it was a general instruction, basically, by Mr. Puccio, that Mr. Sharf and I were to monitor the meeting, to determine at that particular time whether any Federal violations were being committed and make sure that there was no entrapment done, support the FBI in the way they were conducting the investigation. I do not think we had a specific function there. I think, as I recall it, we did agree that if there were some particular problems during the [13] meeting that we could call up McCarthy on the phone. I think we had that worked out at that particular time.

Mr. **Wheeler**. All right. I would like for you to describe for the committee, Mr. Jacobs, the relationship—and I mean the formal relationship; who actually had the ultimate say—as between the Justice Department officials who were present in the monitoring room and the FBI officials who were present in the monitoring room, and specifically, would you address yourself to the question of if you, as the attorney, thought that the money should not be exchanged for whatever reason, did you have a veto power in which you could pick up the telephone and call into the room and tell the agent, who was Agent McCarthy, "Don't hand him the money?"

Mr. **Jacobs**. That is a somewhat difficult question. In actuality, I probably did, but there was an understanding that was conveyed to me at a very, very early stage, that the ultimate authority really rested with the FBI, and in particular, John Good. In all the meetings that I monitored, I think John was present just about in every one of them. Had John and I ever disagreed, it would have been John Good's authority at that particular point that could have determined what action was to take place. We never had a disagreement concerning any action, but I was informed by officials at the Department of Justice that in the field, the FBI had the final authority, and sole authority—even though in actuality, Mr. [14] McCarthy, Mr. Amoroso, and Mr. Weinberg, I am certain, would have heeded my directions, had I made a phone call and given a particular instruction.

Mr. **Wheeler**. Now, before the MacDonald meeting that you monitored, you are aware, and you were aware, Mr. Jacobs, that Director Webster had instructed that the money was to be delivered only to Commissioner MacDonald—that is a quote: "Deliver money only to Commissioner MacDonald." And——

Mr. **Jacobs**. Mr. Wheeler, I was not aware of that particular language.

Mr. **Wheeler**. Mr. Good did not tell you that Director Webster had issued that instruction?

Mr. **Jacobs**. No.

Mr. **Wheeler**. At any time?

Mr. **Jacobs**. No.

Mr. **Wheeler**. did he tell Mr. Sharf that, to the best of your knowledge?

Mr. **Jacobs**. Not in my presence.

Mr. **Wheeler**. So, is it your testimony that at the time the MacDonald meeting began, you were totally unaware that Director Webster had instructed that in the MacDonald transaction, the money was to be delivered only to Commissioner MacDonald?

Mr. **Jacobs**. Mr. Wheeler, if you are referring to a teletype that I believe exists in the FBI files, an internal [15] teletype, I have seen that teletype subsequent to the MacDonald meeting. As I explained to you, I think the morning of the MacDonald meeting or that night before, I was present when Mr. Puccio had a conversation with Judge Webster. I did not listen to the conversation, but Mr. Puccio was speaking to Judge Webster on the phone, discussing the MacDonald case at some length. When Mr. Puccio got off the phone, he and Mr. Sharf and myself discussed the general way that the meeting was going to be conducted. I did not receive any instructions whatsoever at any time in Abscam that the money had to be directly handed to the politician.

Mr. **Wheeler**. When you said you heard the telephone conversation between Mr. Puccio and Judge Webster——

Mr. **Jacobs**. I heard Mr. Puccio's end.

Mr. **Wheeler** [continuing]. You only heard Mr. Puccio's end.

Mr. **Jacobs**. That is correct. I was not listening to it.

Mr. **Wheeler**. All right. Now, is your testimony that Mr. Puccio did not tell you that Judge Webster had instructed to delivery the money only to Commissioner MacDonald?

Mr. **Jacobs**. No.

Mr. **Wheeler**. I should tell you, Mr. Jacobs, that Mr. Puccio testified before this committee the day before yesterday, and when he was asked about the MacDonald meeting, he did not refer at all to a conversation with Judge Webster in which [16] he told Judge Webster anything about a plan of action. How firm is your recollection about that conversation having occurred that close to the meeting?

Mr. **Jacobs**. I know we had a conversation very close to the meeting. It was generally discussed how much money, what was going to generally happen. I recall the meeting.

Mr. **Wheeler**. Was there anything in that conversation that led you to believe that Judge Webster thought it was OK if the money were not handed to MacDonald?

Mr. **Jacobs**. I do not know if the matter was discussed between—or, I do not recall any conversation between Mr. Puccio, at least on his end, exactly how the money was going to be transferred. I know I had lengthy discussions with Mr. Puccio and Mr. Sharf throughout Abscam concerning that particular subject, whether the money had to be directly handled to the politicians.

Mr. **Wheeler**. For the future, Mr. Jacobs, do you think it would be a good idea for directives such as that that came down from

Judge Webster to be given to the attorneys who are on the scene and monitoring these kinds of transactions?

Mr. JACOBS. Certainly, I have had an opportunity to see communications subsequent to their being given to the FBI, where my name has been referred to. I certainly feel if the FBI is going to make reference to the strike force attorneys and their authorizations on certain meetings, I certainly [17] feel that that communication should be given to the Department of Justice attorneys.

Mr. WHEELER. Well, more than that, Mr. Jacobs, here, you have the head of the FBI who used to be a U.S. Court of Appeals Judge, who presumably knows something about the criminal law, and his instruction is the money should be handled only to Commissioner MacDonald. Again, don't you think that the attorney who is on the scene, in charge of monitoring the transaction, ought to be informed before the transaction actually occurs that that is an instruction given to the FBI?

Mr. JACOBS. Mr. Wheeler, I guess I just disagree with you whether that is literally what Judge Webster meant. I guess you will have to ask Judge Webster what he meant. I never received any instruction from the FBI of from any Department of Justice official that the money had to be given only directly to the politician. I had numerous conversations with a lot of officials at the Department of Justice about how these meetings were conducted. Obviously, they were reviewed by people in the Department of Justice, and reviewed by Judge Webster. I never received any instruction back from anyone that that type of course of action should take place.

But I do agree with you that those types of communications should be shown to Department of Justice officials.

Mr. WHEELER. That is really my question. This committee is trying to decide whether any further action is needed in [18] this area, and one of the areas of concern that has arisen, very strongly, is the communication or lack of communication between the Justice Department people on the one hand—that is, non-FBI people—and the FBI people. And here is an instance in which the Director has issued what, in my view, is an unequivocal statement, "Deliver money only to Commissioner MacDonald," that never gets to the attorneys who are in charge on the scene of monitoring the transaction. Don't you think that there ought to be a formalized procedure whereby those types of communications are communicated not only to the FBI agents, but to the attorneys on the scene?

Mr. JACOBS. Absolutely, I agree with you. I do not quarrel with that position.

Mr. WHEELER. All right. Now, another transaction that you monitored, Mr. Jacobs, was the transaction that occured on November 7 with Senator Pressler, isn't that right?

Mr. JACOBS. Yes.

Mr. WHEELER. This is a transaction that has been much discussed also in the last couple of weeks, but you are the person who was there, and I would like to ask some questions about it.

Would you describe for the committee what you heard on November 7, 1979 that led to Senator Pressler being approved for appearance at the video taping session and to be offered a bribe?

[19] Mr. WHEELER. Well, the events of that day were hectic, to say the least, as I recall them. I do recall that Silvestri at one point

was going to bring over some politicians, and for whatever their reason was, they could not attend, and I remember there was a conversation where Silvestri said that he was going to bring over Senator Pressler. I think there was one unrecorded conversation; I am not certain if that was with Agent Amoroso or not. But in any event, there came a point where I was informed that Senator Pressler was going to come over. I seem to recall listening to the tape, because I think the tape was made that day in the townhouse; that meeting took place in the townhouse here in Washington. I recall that both John Good and I made telephone calls—I made telephone calls, obviously, to Mr. Puccio and Mr. Sharf. John Good made phone calls to various FBI officials, and it was mutually agreed at some point that we would continue with the meeting and that the Director gave authorization for the meeting to take place, which was necessary at that time.

Mr. WHEELER. Now, you say you listened to a tape——

Mr. JACOBS. I seem to recall, Mr. Wheeler. It was my practice, in particular at the townhouse, where meetings were about to take place, and Weinberg or Amoroso was setting up the meetings, taping the conversations. Obviously, there were no facilities to record the tapes, but I would listen to the original tapes right after they were made. After they got off [20] the phone, I would have them played back for me.

Mr. WHEELER. This would be a tape of whom?

Mr. JACOBS. I do not recall. I seem to remember that day listening to some tapes, whatever tapes were made that day or the night before, with Silvestri.

Mr. WHEELER. Of the night before?

Mr. JACOBS. As I said, there were tapes reviewed. While I was in the townhouse—and I had been there for several days, and I think I stayed several days after that—whatever tapes were being made at the townhouse, I was reviewing as they were taking place.

Mr. WHEELER. Well, let me tell you, Mr. Jacobs, that when the FBI officials testified last week, they also suggested that they thought there was a tape between Silvestri and Amoroso in which Silvestri made these representations, and I represented to them that we had two Silvestri tapes in our possession, and in neither one of those did Silvestri make any such representation. They then confirmed the following day that I was accurate. There is no tape in which Silvestri says to Amoroso, "Senator Pressler will take a bribe."

Mr. JACOBS. You may be correct, Mr. Wheeler. As I said, I did not have a specific recollection of what was said. I know I reviewed whatever Silvestri tapes were there. It was my practice that as the tapes were being made, I would review them.

[21] Mr. WHEELER. What were you told Senator Pressler would do?

Mr. JACOBS. I was told that Senator Pressler was going to come to the townhouse and take $50,000 to introduce a private bill.

Mr. WHEELER. Who told you that?

Mr. JACOBS. This came through the FBI and through Weinberg.

Mr. WHEELER. All right. So the chain was that you heard it from the FBI, presumably Jacobs——

Mr. JACOBS. Presumably Amoroso.

Mr. **Wheeler**. You heard it from Amoroso, and Amoroso heard it from Weinberg?

Mr. **Jacobs**. Mr. Wheeler, as I sit here now, I do not recall the exact sequence of events, but certainly, that was communicated to me.

Mr. **Wheeler**. All right. So it is probable that you heard it from Amoroso, who heard it from Weinberg, who heard it from Silvestri?

Mr. **Jacobs**. Well, I would not say that that is correct, because Weinberg was living in the townhouse with Amoroso and myself. I was staying there in the townhouse at that particular time. I do not recall flying in that morning. I was there. I did not need a buffer zone between myself and Mr. Weinberg. We all sat around and discussed what was going on, [22] so any conversations that Weinberg had, I sat and talked to him face-to-face, one-on-one, with Amoroso and with the agents. So I never got information communicated from Weinberg to Amoroso to me. It was usually directly with Weinberg.

Mr. **Wheeler**. So you think you got it from Weinberg directly?

Mr. **Jacobs**. Whatever was communicated to me, certainly.

Mr. **Wheeler**. Who got it ostensibly from Silvestri?

Mr. **Jacobs**. Oh, yes, that is correct.

Mr. **Wheeler**. Now, the testimony of the FBI last week was that this approval process took approximately one-half hour and there was a great hurry to make a decision on this. The call that came in from Good, according to the documents, was at 11:35 a.m., and a decision, it was felt, had to be made in a half-hour. Is that your recollection, as well?

Mr. **Jacobs**. It was a very short period of time.

Mr. **Wheeler**. All right. Were you concerned about this issue about bringing in Senator Pressler?

Mr. **Jacobs**. Absolutely.

Mr. **Wheeler**. What was your concern?

Mr. **Jacobs**. Well, I thought that we may be rushing it. I was not sure exactly whether we had all the facts clearly. I know I chatted with the FBI agents and with people in Washington and up in New York. It was a very, very short period of time, because the phones were ringing a lot. And we all [23] discussed the matter, and we felt that in light of Silvestri having brought Congressman Thompson to us, and his representations that he was bringing a U.S. Senator to perform some illegal activity, that we would continue the basic philosophy, I guess, that we had in Abscam, that if someone was going to bring a politician to us, we would meet the politician, and that is what we did.

Mr. **Wheeler**. All right. I am going to come back to Congressman Thompson in a moment, but let me ask you first, you said that you called several people in New York. Did you call Mr. Sharf?

Mr. **Jacobs**. Oh, yes, absolutely.

Mr. **Wheeler**. What did Mr. Sharf say to you when you called him?

Mr. **Jacobs**. Well, I recall Mr. Sharf who was in New York stating that, I think he had been at Harvard Law School a year behind Senator Pressler, or he had met Senator Pressler, just had met him at Harvard, I believe, and he said to me he could not believe that

Senator Pressler was going to come to the townhouse. And we discussed it, and I discussed with him what had taken place that morning or that day, and he said, "Well, if that is what it is going to be," he talked to Tom—I think he was even present with Tom at the time—and we all discussed it, and we all agreed that we should at least have Senator Pressler come to the townhouse.

[24] Mr. WHEELER. But in any event, Larry Sharf, who had been at Harvard Law School contemporaneously with Senator Pressler——

Mr. JACOBS. I seem to recall it, yes.

Mr. WHEELER [continuing]. Expressed surprise?

Mr. JACOBS. Absolutely.

Mr. WHEELER. All right.

Mr. JACOBS. I think so did Judge Webster.

Mr. WHEELER. And Judge Webster expressed surprise?

Mr. JACOBS. That is correct.

Mr. WHEELER. To whom?

Mr. JACOBS. Well, it was communicated to me through John Good that Judge Webster was concerned about the meeting with Senator Pressler.

Mr. WHEELER. Did anybody else express surprise before the meeting?

Mr. JACOBS. Mr. Nathan may have. I seem to recall having some conversations with him. I may have had conversations with him, or Mr. Margolis, or one of the officials in Washington.

Mr. WHEELER. Also expressed surprise?

Mr. JACOBS. Yes, that is correct.

Mr. WHEELER. Now, before I get to, I think, the important question on this, Mr. Jacobs, let me go back to your point about Silvestri's record. You said that he had a proven record; he brought in Congressman Thompson.

[25] Mr. JACOBS. Well, I would not say that he had 100-percent proven record. He had certainly brought in at least one public official.

Mr. WHEELER. Well, he brought in a public official. Now, you are aware, though, now, Mr. Jacobs, aren't you—and actually, you were aware then—that Congressman Thompson was not credited to Silvestri; he was credited to Mr. Criden.

Mr. JACOBS. Uh-huh.

Mr. WHEELER. And in fact, no one even knew at the time that Congressman Thompson came in that Silvestri had made the original introduction; you are aware of that?

Mr. JACOBS. I do not recall at this particular time.

Mr. WHEELER. And on October 17 in a tape recorded conversation between Weinberg and Silvestri, Silvestri said to Weinberg that he, Silvestri, had not even known when he made the introduction that this was to be for a bribe. He thought it was for some kind of a campaign contribution. So that Silvestri had not proved reliable at all in terms of an illegal transaction, based on the Thompson transaction.

Mr. JACOBS. I do not recall it in particular, Mr. Wheeler. I know that we had been dealing with Silvestri, and based upon the conversations that I had, the meeting was authorized.

Mr. WHEELER. All right. Now, the meeting was authorized despite the fact that Mr. Sharf, who had been at Harvard Law School the same time as Senator Pressler, was surprised; [26] that Director Webster was surprised; that either Mr. Nathan or Mr. Margolis was surprised; that the people on the scene were surprised; that Senator Pressler's name had never once arisen in any context in Abscam before; that an indices search by the FBI revealed absolutely no prior corrupt activity or even the hint of corrupt activity by Senator Pressler, and nevertheless, in a time period of approximately one-half hour, the decision was made to say to Silvestri, "Bring him in."

In retrospect, Mr. Jacobs—in retrospect—do you think that was the wrong decision?

Mr. JACOBS. Yes; we certainly could have taken more time, spent a little more time with Silvestri on it. I thought the decision may have been rushed at that particular time, as well. We were all concerned about it, Mr. Wheeler. I would not want to give you the impression that the Department of Justice were there with their tongues hanging out, waiting for a U.S. Senator to come in. There was a lot of concern expressed about that particular meeting, in particular by Judge Webster. It was not a meeting that we were "looking forward to," quote-unquote, in any way whatsoever. We felt that under the circumstances of Abscam, if one of these middlemen were going to produce a U.S. Senator based upon the representations that he made through Weinberg and Amoroso, we did not want a situation where we were picking and choosing who we were going to meet. In retrospect, I think it was a bad decision. [27] I think we could have taken a lot more time in making that decision. But under the circumstances as we were conducting it in the field at that particular time, we went ahead with the meeting. I certainly think now that obviously it was not a good idea to conduct that meeting at that particular time, so I do not disagree with you there.

Mr. WHEELER. All right. Yesterday, Mr. Jacobs, Mr. Plaza, who I think you know was an assistant U.S. attorney in New Jersey at the time——

Mr. JACOBS. We were assistant district attorneys in New York county together, back in the early seventies.

Mr. WHEELER. Mr. Plaza testified that it was his belief at the time, and it remains his belief today, that while it is permissible and proper to bring in a public official on the word of a corrupt middleman that the public official will accept a bribe payment and will sell his office in return for that, Mr. Plaza says that that should not be done unless the attorney in charge of the case has a chance to listen to a tape recording or to read a transcript of the conversation in which the middleman makes that representation. As long as that is done, it is OK. How do you feel about that?

Mr. JACOBS. Well, it is probably a difficult standard to adopt. I guess it depends on who the middleman is, what the circumstances are in the investigation. It was certainly my policy and Mr. Sharf's policy, being the two attorneys from the [28] strike force who ran the field investigation, to listen to the tapes before we met with the various public officials. I will not disagree. I mean, I would never turn down the opportunity of listening to a tape of a middleman laying out what the scenario is going to be with the politician; sometimes it was available, sometimes it was not. It is a good policy to have that available. I will not dispute that. But I do not know if you can make a hard and fast rule. Sometimes tapes, for security reasons, cannot be made. They may be a danger to the informant or to the agent. I think that if you were to adopt some sort of hard and fast rule, it might compromise the criminal investigation. But as a question of whether it is a good practice, I agree with you 100 percent. Mr. Plaza is not wrong that way. It is certainly a good practrice for Department of Justice attorneys to review those tapes before payments are authorized.

Mr. WHEELER. Wouldn't you agree, though, Mr. Jacobs, that as a policy matter, that if there are instances in which a tape cannot be made of a middleman making these representations about what a politician will do or what a public official will do, that in that instance, the sound, preferable policy is to say,"All right, as to this particular instance, we are simply not going to bring that person, in." It is not going to compromise the whole investigation. We will get other fish. But we are just not going to take the chance of having an [29] incident like Senator Pressler's incident occurring, where we do not know exactly what the middleman said.

Mr. JACOBS. Mr. Wheeler, I just do not agree with that particular point of view. The way Abscam operated, we tried to minimize or totally eliminate the type of situation with Senator Pressler. It was certainly a very regrettable incident. It certainly was the last thing that any of us wanted to see occur, in the sense that we were trying to avoid the situation of having innocent politicians come in. But as part of having been a prosecutor for a number of years, it is something that just has to be risked in this type of investigation. As Judge Pratt pointed out in his due process opinion, it is a self-selecting procedure that took place here in Abscam, and certainly, the possibility existed, and we all realized, it that innocent politicians may come in. But as Judge Pratt said, there are certainly alternatives that could take place. The Politician could walk out of the meeting, which Senator Pressler did here.

I think—and as I expressed to you, my concern about it was—what was even more regrettable was the obvious way that Senator Pressler's name came out via the leaks and everything. Had it been done properly, the way we had hoped it would be done, by a statement by the Attorney General, I certainly feel that some of the adverse publicity would not have occurred. But I do not know if you can set a hard and fast rule with respect [30] to conducting these types of investigations with respect to absolutely requiring tapes to be made. Many convictions are secured in this country in investigations of this nature without tape recordings. I think by requiring that type of thing, you are putting a difficult burden on the law enforcement agencies involved. The courts certainly do not require tape recordings to be made corroborating this type of selectivity. I think it would be difficult to adopt.

Mr. WHEELER. Well, of course, you recognize that just because the Constitution does not require it, that does not mean that it would not be a sound legislative act of Congress——

Mr. JACOBS. I certainly will—as I am pointing out to you, at this point, the courts certainly do not require that, and convictions are obtained daily without the use of these types of tape recordings, and obviously upheld by the courts.

Mr. WHEELER. And you also understand that we are talking here not about tape recording every conversation or, in fact, every material conversation, between the informant and the middleman; we are talking about the predicate conversation, the one in which the middleman allegedly says, "This particular public official will accept a bribe, and he knows why he is going to this meeting."

Mr. JACOBS. Mr. Wheeler, it is obviously a good philcsphy and a good practice to record those meetings, have those meetings reviewed by Department of Justice attorneys. I [31] will not quarrel with you at all on that. I mean, certainly, it made our job a lot easier when we had those type of tape recordings available to review. I cannot argue it that way. Whether it has to be a fixed and fast standard, I cannot comment on. I mean, I know that I always prefer to have a tape recording, But I do not know that you can adopt such a hard and fast rule.

Mr. WHEELER. What was your reaction and what was Mr. Sharf's reaction after the Pressler meeting to what had occurred?

Mr. JACOBS. Well, I recall, without even recalling anybody, that we were all upset by the meeting. It obviously was not anything that we expected. I thought under the circumstances—I complimented Agent Amoroso for at least realizing during the meeting that obviously Pressler did not know what was going on, and it had not been explained to him before, and I was glad that it had not gone further than it did. And, as I think I have pointed out to you, and I think I previously testified in some court proceedings, I called and terminated the meeting.

Mr. WHEELER. Again, after the meeting, Mr. Sharf's reaction was even stronger than——

Mr. JACOBS. Oh, he was very, very upset with the meeting. It was obviously something we all realized might happen, but obviously, it was the first time that we had a situation, you [32] know, so clearly—there were some equivocal meetings before that, but obviously, this was the first time that we had actually had someone just completely walk out like that, and obviously, it was of great concern to us. We certainly did not want to have that to be the continuing practice in the investigation.

Mr. WHEELER. And in fact, you told me, didn't you, Mr. Jacobs, that Mr. Sharf was so upset by it that he even talked about resigning?

Mr. JACOBS. Oh, yes. He was very upset.

Mr. WHEELER. And nevertheless, Mr. Jacobs, in December, within a month after this meeting, Silvestri was relied upon yet again for an investigation that began into one of the most influential Members of Congress; isn't that right?

Mr. JACOBS. That is correct. With Mr. Plaza's approval and Mr. Weir's approval, I should note.

Mr. WHEELER. The documents do not bear that out; they deny that.

Mr. JACOBS. That may be the case. I would not be surprised if they would deny that.

Mr. WHEELER. Now, Mr. Jacobs, I would like to talk about the telephone calls that occurred during the Pressler meeting. Again, you were the person who was there, so you can shed some light on this. There were two telephone calls.

Mr. Jacobs. Correct.

[33] Mr. Wheeler. Would you tell us what the purpose of each of those two telephone calls was, please?

Mr. Jacobs. Well, as I recall now, I recently reviewed the transcript and reviewed some of my previous testimony. The first call—I do not know what that was; I think that was either a wrong number, or maybe somebody just trying to get into the townhouse. As I explained to Mr. Wheeler, the phone line that was running into the room that was used for the meeting was just a general phone line. It was not a private line that Amoroso was picking up between myself and him. I did not make the first phone call; I made the second phone call, that is for sure. And I made that on the basis of what I was listening to. I talked to John Good briefly about it, and John Good and I both agreed that obviously, Senator Pressler had not been informed about what was going on, had not previously agreed to accept any money for any illegal activity. I called Amoroso on the phone, and I said, "Tony, Senator Pressler does not seem to know what is going on here. I think you should terminate the meeting as soon as possible. Be polite, and do that."

He said, "Fine." He certainly did not disagree. I knew he was going to do that, anyway. I could sense that. The meeting ended sometime shortly thereafter.

Mr. Wheeler. Now, it was approximately 7 minutes into the meeting that Silvestri made the following statement: "What [34] happened, you know, you are probably not up on it, and I did not get a chance to tell you, but what happened is we got lost in the Senate"—"we", referring to himself and Pressler—"we got separated, and I just met him right here in Georgetown, 5 blocks away. We did not get a chance to talk about that aspect of it. I talked to his—Tony, I will lay it very flat—I talked to his campaign manager, his treasurer. I had pledged to get him money to get through his campaign."

At that point, you were aware, and Mr. Good was aware, and Mr. Amoroso was aware, that Silvestri, in fact, had lied when he called and said——if he did say it—that he had talked with Senator Pressler, and Senator Pressler was going to accept the bribe; isn't that right?

Mr. Jacobs. No, Mr. Wheeler. I think that it is unfair for you to sit here at this particular point with this transcript and to make that judgment. As John Good and I were listening to the tape, obviously, we started to get some concern about what was going on, and we got concerned somewhat quickly. But I do not think we had reached a conclusion at that particular point what you just said. Certainly, at that particular point, John Good and I started to talk back and forth that, "We may have a problem here." But I do not think we had reached a 100-percent conclusion at that point. We felt that Agent Amoroso, who was experienced in this area, was aware of the fact that a possibility might exist that a [35] politician may not come in, was certainly capable of handling the situation, which I feel he was. I had not reached that ultimate conclusion at that particular point.

There was a lot of pressure at the time on both Amoroso and Good and myself. We are listening, monitoring the meeting, not having the luxury of sitting here and reading the transcript a half dozen times in the cool, calm light of this caucus room.

Under the circumstances, we realized that problems were starting to come up, and we started to talk about what we were going to do.

Mr. **Wheeler**. But your telephone call to Amoroso to terminate the conversation did not occur until some 13 minutes later, after Amoroso, in fact, went on to proceed to push the issue.

Mr. **Jacobs**. That is correct—well, you have to remember, Mr. Wheeler, that I was confident that an honest Senator could always say "No" and walk out of the room if Amoroso put the money on the table and started to spread it out. I was not concerned about the fact. I was just concerned about the fact of any possible entrapment or anything else like that. As far as I was concerned, if Agent Amoroso took the money and threw it on the table, I would assume that Senator Pressler did not know what was going on, he would walk out of the room and say, "I am not going to take a bribe." I was not concerned [36] about that. I just wanted to make sure that we knew exactly what was going on. I was surprised to hear that Silvestri had just met him. And Good and I started to talk about, "what should we do here, under the circumstances?" One of the things we were concerned about was having the investigation compromised at that particular point.

We had a lot of things we had to talk about before I made the phone call, terminating the meeting.

Mr. **Wheeler**. Mr. Jacobs, the other issue on which I think you have a unique amount of knowledge, at least with respect to Justice Department attorneys, is the control of the informant, and in particular in this case, control of Mel Weinberg.

About how much time did you spend with Mel Weinberg during 1979, the covert stage of Abscam?

Mr. **Jacobs**. Probably hundreds of hours.

Mr. **Wheeler**. And you went down to Washington with him?

Mr. **Jacobs**. I do not recall ever traveling with Mr. Weinberg anyplace. I certainly met him at various locations over the years though, that I was supervising in the field during the investigation.

Mr. **Wheeler**. Washington?

Mr. **Jacobs**. Oh, yes. I met him in Washington.

Mr. **Wheeler**. Flordia?

Mr. **Jacobs**. I met him in Florida. I met him in New [37] York City—a lot of places.

Mr. **Wheeler**. All right. Now, in the early stages of Abscam, Mel Weinberg was living in New York, isn't that right?

Mr. **Jacobs**. That is correct.

Mr. **Wheeler**. And ultimately, he moved down to Florida?

Mr. **Jacobs**. That is correct.

Mr. **Wheeler**. And that was sometime in the spring of 1979 that he moved?

Mr. **Jacobs**. That is correct.

Mr. **Wheeler**. Was that over your objection?

Mr. **Jacobs**. It was.

Mr. WHEELER. Why did you object to having Mel Weinberg move to Florida?

Mr. JACOBS. Well, it is a practical problem, more than anything else. I felt that if Weinberg was here, I would have access to him immediately, I could talk with him, I could work with him on what was going on. I always found it difficult to deal with Weinberg over the phone in Florida. I certainly felt that it was always a good practice with any criminal investigation to have the witnesses and the informants and the agents be available as closely as possible. I do not think I was ever 100 percent happy that Amoroso was in Florida, either. I mean——

Mr. WHEELER. Can I shorten all that up?

Mr. JACOBS. Sure.

[38] Mr. WHEELER. Would it be fair to say that what you are saying is that one of the problems with providing adequate control over Mel Weinberg is that he, the informant in Abscam, was located in a State 1,500 miles away from the office that was in charge of the operation?

Mr. JACOBS. Yes.

Mr. WHEELER. Would you say that in the future, that ought not to be allowed?

Mr. JACOBS. Well, it depends on the circumstances, Mr. Wheeler. I mean, the FBI had reasons which they explained to me why they felt that Weinberg should be in Florida. I just happened to have a disagreement with them, and obviously, you know, I was to some extent overruled. But in any event, that is part of a criminal investigation. People have disagreements about things like that. It is not unusual. The FBI felt that they had adequate safeguards to control Weinberg. I just felt more as a practical necessity, not as a legal requirement or any thing else like that, that it would have been a lot easier if Weinberg were within striking distance, right up here in New York, so that we could talk with him some more and see what was going on. We could have access to the tapes a lot quicker—a lot of reasons we would have been better off having him here in New York.

Mr. WHEELER. When you say you objected and you were overruled, who was it who overruled you?

[39] Mr. JACOBS. Well, I seem to recall being at a meeting in the spring of 1979 at the FBI—I am not certain whether there was one Assistant Director there or two Assistant Directors—Mr. Puccio, myself, Mr. Sharf, Mr. Good. And I expressed—and it was more of a personal concern than anything else—I do not know if it was the Department's position—I just explained to the various officials who were there, as the strike force attorney in the field, I thought it would be a better idea to have Weinberg stay here in New York. And they said, well, they had considered that, and Weinberg strenuously objected. He wanted to go to Florida for his own personal reasons. He had family problems and things like that. They felt that Amoroso was down in Florida and other agents that he was working with, and that they would be able to adequately supervise him.

Mr. WHEELER. Yesterday, Mr. Jacobs, Mr. Plaza testified that very shortly after he became involved in the Abscam operation in April of 1979, he began to voice complaints about the fact that there were numerous conversations and meetings that were going unrecorded by Mel Weinberg and which were also going unmemorialized in FBI summaries, such as what are called 302's.

Do you recall Mr. Plaza and Mr. Weir making those kinds of objections?

Mr. JACOBS. Well, I do not know how numerous they were. [40] I certainly realized, or certainly had conversations with Plaza and Weir from the outset, that they made objections that certain conversations were unrecorded. I made the same objections.

Mr. WHEELER. You agreed with Mr. Plaza and Mr. Weir that there were such conversations going unrecorded, and that that was a problem?

Mr. JACOBS. Well, I do not know if it was a problem. I expressed my concern to the FBI and to Mr. Weinberg that he should make every attempt within reason to record conversations. That was an instruction that did not have to be given by Mr. Plaza or Weir; it was given by me and Mr. Sharf.

Mr. WHEELER. When did you first give that instruction to Mr. Weinberg?

Mr. JACOBS. The first day I met him.

Mr. WHEELER. And did you give that instruction over again over the course of Abscam?

Mr. JACOBS. A couple of hundred times.

Mr. WHEELER. Did you give it a couple of hundred times because you felt that he was ignoring it?

Mr. JACOBS. I felt that at various times, Mr. Weinberg, just for practical necessity, would either be lazy, would not have the time, would not think about it. Mr. Weinberg, for all his being a con man and a lot of other things, was not a trained FBI agent and did not have the discipline that the FBI agents [41] had with respect to that. And like anyone else that you work with in a criminal investigation who is an informant, you have to remind him about things constantly, so I would remind him about things constantly that in the long run, that would potentially be a problem, and a question of fact for a jury, or a question of fact before a committee, that he is not recording certain conversations. So I said, "Rather than have aggravation later on, record all the conversations."

Mr. WHEELER. You say he was not a trained FBI agent and lacked the discipline of a trained FBI agent. The FBI agents who were involved had a policy, there was a formal FBI policy that they were required to summarize in a written 302 any material conversation that was not recorded. You are aware of that, aren't you?

Mr. JACOBS. Yes.

Mr. WHEELER. And yet, they did not do that either, with respect to these various conversations and meetings that are material, such as the meeting that occured for 4½ hours on March 30, 1979, directly before the MacDonald payoff. Did you talk to the FBI about that problem, as well?

Mr. JACOBS. I recall on some occasions expressing the fact that if at all possible, that Agent Amoroso in particular should try to make some 302's, if he was capable of doing it under the circumstances of the traveling and things like that. Unfortunately, Agent Amoroso was in the field a lot, and it [42] was almost impossible for him to sit down and dictate a 302.

Agent Amoroso was aware of the situation that he may not be able to memorialize certain things in writing, and it was just something that could not be avoided under the circumstances.

Mr. WHEELER. You are aware, though, Mr. Jacobs, that Agent Gunner Askeland in Miami, who was also working on this case and a parrallel case called Goldcon, and Agent McCarthy, when he was on this case, they did a very good job of creating numerous 302's. Indeed, Askeland created virtually one a day between September 20 and October 20, 1978.

Why was Agent Amoroso's circumstance so peculiar that he could not comply with the regulations?

Mr. JACOBS. Well, I do not agree with you, Mr. Wheeler, if you are saying that Agent Amoroso did not comply with the regulations. As far as I know, Agent Amoroso made every effort to comply with the regulations, and if, on various occasions, he did not make a 302, I am certain he had a good reason not to.

As I explained to you before, Agent Amoroso was under tremendous pressure in this investigation. It was not very pleasant for him to have to go to these meetings with these politicians. Obviously, a lot of people were looking over his shoulder during these meetings. He was being tossed around by various people within the FBI, tossed around by various people within the Department of Justice. And I always [43] felt he did as good a job as any human could have done under the circumstances. I certainly never felt that he intentionally ever failed to make a 302.

Mr. WHEELER. Mr. Jacobs, I suggest to you that the problem may lie in the following testimony by Mr. Amoroso in the due process hearings in the *Jannotti-Schwartz* cases on September 26, 1980.

The question was asked of him by Mr. Ben-Veniste:

> *Question.* Is there a regulation in the FBI with respect to writing memoranda when you have contact with informants?
>
> Answer by Agent Amoroso: "Not to my knowledge."

Mr. JACOBS. I am not certain what you mean by "informants." Perhaps you can correct me if I am wrong. I certainly never read the regulation to require every time he spoke to Weinberg, he was supposed to make a 302.

Mr. WHEELER. Mr. Jacobs, didn't it disturb you that on January 19, the day before the Errichetti payoff, that Weinberg met with Errichetti, in an unrecorded, un-302'd conversation; that on March 30, 1979, the day before the MacDonald payoff, Errichetti met for 4½ hours with Weinberg, in an unrecorded, un-302'd conversation? These are not the kind of conversations that are unimportant. They are not the kind that are unplanned. They are not the kind that you can explain why, for 1 week, 1 month, 6 months, 1 year after these material conversations, there is literally no [44] record in the FBI files that these conversations ever existed.

Mr. JACOBS. Mr. Wheeler, you are correct in stating that I was concerned about it. I tried one of these Abscam cases, and I had to stand before the jury and explain to the jury that Weinberg did not record a conversation and what impact, if any, it had upon a trial.

Mr. WHEELER. And that Amoroso did not summarize the conversation—he did not debrief Weinberg and record it for the files.

Mr. JACOBS. Mr. Wheeler, I agree. I am just saying to you, it is part of this particular investigation. Every one of us who tried one of these cases, including the prosecutors down here in Washington and the prosecutors up in New York who tried these cases, had to stand in front of a jury, because all of these arguments were made ad nauseum by defense lawyers of this type of practice. It was part of this particular case that some of these conversations were not recorded and were not summarized. And as far as I know, all the juries have convicted everybody involved, and I have not seen any cases overturned by any courts of appeals yet. And certainly, the due process cases that have been decided have not felt that that was any type of outrageous conduct on behalf of the Government.

Certainly, as someone who had to stand in front of a jury and explain to the jury that Weinberg did not record that is [45] not a pleasant task, as a prosecutor, to have to explain the fact that there is a gap or a fault or a weakness in your particular case. And certainly as a prosecutor, I would have preferred to have all of those conversations recorded, and I am certain I speak for all the attorneys who had to try these cases before juries around the east coast, here in the United States. It is not pleasant to go and explain to the jury the fact that some of these conversations were not recorded, but yet, the juries found at least the Government's case credible enough to bring back guilty verdicts with respect to that.

Mr. Wheeler. Well, of course, in probably the most serious instance in which this incurred—namely, the *MacDonald* case—the Government never had a chance to be proved wrong on this because Mr. MacDonald died before the prosecution actually went on trial.

Mr. Jacobs. That is correct.

Mr. Wheeler. And this is the one where there is substantial evidence that Mr. MacDonald was, in fact, duped and did not know what was going on in terms of the bribe.

Mr. Jacobs. Well, I am not certain, Mr. Wheeler, how you resolved that particular issue. I have not heard Mr. Errichetti's testimony with respect to that. I know there is a difference of opinion as to what took place in the *MacDonald* case. I was present and at least supervised that phase of it. I know that the case was approved by various officials within [46] the Department of Justice, and an indictment was returned. I was not there—or, I was not involved in the grand jury investigation and the months and hundreds of hours that took place reinvestigating the case after all these allegations came up that maybe MacDonald did not take the money. I know that the Department spent a great deal of time looking into this matter, and I know an indictment was returned.

Mr. Wheeler. All right. Mr. Jacobs, do you have any suggestions for this committee as to what can be done in the future with respect to preventing a situation from arising in which the attorneys who are in charge of the case and who are working on the case—in this case, yourself and Mr. Plaza and Mr. Weir—are displeased about the absence of recordings, displeased about the absence of 302's; they voice their displeasure to the informant, they voice their displeasure to the FBI, and yet the situation does not change. It appears as though the FBI is not only independent, but that when it feels like it—and I am talking about the people in the field—they can simply ignore the requests and the serious concerns raised by the attorneys who were the ones who were supposed to monitor and who have to prosecute the cases.

Can something be done to prevent this problem from arising in the future?

Mr. JACOBS. Well, I am not certain if I agree with you whether the FBI disregarded it in Abscam. I certainly feel [47] that these concerns were expressed to John Good and to Mike Wilson and to various FBI officials all the way up on top. Certainly, explanations were given to myself and Mr. Puccio—maybe not to Plaza and Weir—that were satisfactory, but certainly to us, under the circumstances.

I did make one suggestion to you, Mr. Wheeler, when we met, and I will stand by my suggestion. I certainly feel that it might be a good practice on an undercover operation certainly of this nature, for sure, that meetings be held periodically, perhaps once a month, with the U.S. attorney in the District, as well as the Strike Force Chief and the SAC who was in charge of the FBI office conducting the investigation to discuss problems like this, as opposed to the case agent, someone like John Good. There is no such requirement at the present time within the Department of Justice guidelines. Certainly, that type of a little bit more detailed supervision, where the U.S. attorney personally becomes involved, the SAC on a one-to-one meeting with various people, with the informant present, discuss the case, would be, I think, an excellent suggestion and something that could be implemented and might alleviate some of the problems that came up in Abscam.

Mr. WHEELER. Mr. Jacobs, the last area that I want to explore for just a minute with you is, when we talked last week, you expressed to me your view—and please correct me, if [48] I am misstating you—that many, if not most of the problems that you perceived with Abscam, to the extent that you do perceive problems, arose because of the multidistrict nature of the investigation and the failure of the Justice Department in Washington really to coordinate between and among the various districts with a firm hand from the beginning, to assign responsibilities, and to make sure that the case went smoothly. Have I stated your statement to me correctly, and if I have, would you elaborate on that, please?

Mr. JACOBS. Well, I do not know if it is stated correctly. I would be happy to state what my position is with respect to that.

As a practical necessity in any criminal investigation, once you move out of your own area and you are involved with other prosecutors, there is obviously a lot of rivalry, and a lot of personalities involved. Certainly, I perceived at a very, very early stage the fact that there was going to be a tremendous problem with the Jersey prosecutors and in fact with the Jersey FBI to some extent, because obviously, in any criminal investigation, there is some ego involved.

Certainly, I think, in every sense of the word, the various officials, in the Department of Justice in particular—Mr. Hyman, who was in charge of the Criminal Division, and Mr. Nathan, who I understand is going to testify sometime later today—were in good faith trying to resolve the [49] differences amicably as early as possible. They obviously wanted to see that the investigation was given as much attention as could be given by different prosecutors. I just realized that that was never going to work out. I was not involved in the meetings with Mr. Hyman and Mr. Nathan and those officials in Washington. Mr. Puccio handled that end. But I just perceived from the beginning that sooner or later, it was going to result in a blowout between the two offices.

Certainly, maybe in hindsight, looking back, had the officials in Washington given our office the authority right from the beginning to complete the investigation, as opposed to trying to give Jersey a piece of the case and things like that, it would have eliminated some of the problems that eventually arose, but I certainly feel that Mr. Nathan and Mr. Heymann in good faith were trying to get these resolved without actually telling Jersey that they could not have the case at all. They were trying to work out something where Jersey could live with the Abscam investigation—I realized that they never were going to do it, but I think that they were trying to, anyway.

I do not know what the answer is to that. It is a very difficult thing, because to some extent, the prosecutors are somewhat independent. They are all under the auspices of the Attorney General, but there is a lot of personalities involved, unfortunately, and a lot of ego involved, and frankly, [50] that is something I think you should address to Mr. Nathan, as opposed to me, perhaps.

Mr. **Wheeler**. Thank you, Mr. Chairman.

Mr. **Mathias**. Thank you, Mr. Wheeler.

Mr. Jacobs, you have described in some detail the procedures for handling the Pressler case. But I am just wondering, after the case was terminated as you have described in your conservation with Agent Amoroso, it went on for about 25 minutes, and both you today and in previous testimony, the explanation of that is that it would have been too abrupt an end; there would have been a blowing of the cover; just an inexplicable kind of situation created.

Senator Pressler had made a number of statements. He said, "I cannot promise anything." He said, "We cannot make any promises. It would not be proper for me to promise to do anything in return for a campaign contribution, so I would not make any promises." He said, "You cannot make a commitment to do anything." By that, I assume he meant "one" cannot make a promise, a candidate cannot make a promise.

Was there no way after he had made these statements to bring this thing to a conclusion at an earlier point?

Mr. **Jacobs**. Senator, it is difficult looking back now, because I have had the luxury of spending a lot of hours examining this. I never was under the impression that my instructions were that if a bribe offer is turned down by a [51] politician that the meeting should abruptly end. Frankly, I was not sure what was going on, as I was listening. I certainly probably came to some of these conclusions, but it took some time to see what was going on. I felt, and I had enough faith——

Senator **Mathias**. You were watching this on a video recorder?

Mr. **Jacobs**. That is correct, with a headset on, and trying to talk to John Good at the same time about what was happening. I felt, especially with Senator Pressler, listening to what was going on and based upon what was told to me obviously about Senator Pressler, that if Tony actually put the money on the table, he would just walk out of the room. So I was not concerned about that. There was no requirement to me to call to terminate the meeting. Agent Amoroso had that authority on his own, and I felt that is what he probably would do. Perhaps it was only out of caution that when Silvestri said, "You have finally met an honest man here," that I said, "John, I think it has gone about as far as it is going to go, and there is no point in continuing the meeting," and I said, "Let me just make sure that Tony seems to have the same type of message."

There was not any real requirement in the meeting earlier than that, and I think this type of situation to some extent was dealt with by Judge Pratt in his due process opinion. He called this "verbal insulation." There are times that a [52] politician would say at the beginning that he does not want a bribe and then later, change his mind. I did not think that was the case with Senator Pressler, but certainly, it was something that was on our minds, and I did not think there was any risk of continuing the meeting because I felt that politicians like yourselves are obviously intelligent enough to know right from wrong, and that when a bribe is offered, they are intelligent enough to understand that it is a bribe, and hopefully, decent and honest enough, as Judge Pratt pointed out, just to walk out of the room, which Senator Pressler did.

So I was not concerned about the fact that some unwilling victim was going to be entrapped here to do something illegal. I did not feel that there was any particular problem about letting the meeting continue on, other than the fact that I just wanted to make Tony aware of the fact that obviously there was a total lack of communication here, and there was no point in continuing it.

Senator MATHIAS. What is your understanding of the inducement for Senator Pressler to come to the house on W Street in the first place?

Mr. JACOBS. Well, I thought it was the same type of inducement that we had previously understood, that there was going to be $50,000 exchanged on the promise by the public official to assist in the introduction of some bill on immigration. That was basically what we had thought about, as [53] I recall the conversations that morning, or that day.

Senator MATHIAS. The Assistant Attorney General, Mr. Heymann, has said that there are two ways in which these situations should develop, one on the basis of reliable and accurate information about the subject, or the process of self-selection by which the subject voluntarily walks into the picture. Neither of those were present in this case, were they?

Mr. JACOBS. Well, in the sense that obviously, Silvestri misrepresented to the Government team what had taken place, you are certainly correct. We did not realize it at the time, though, Senator.

Senator MATHIAS. Mr. Jacobs, I am going to pause just for a moment, because we have an unusual privilege here this morning of being visited by the astronauts from the Space Shuttle, and we particularly want to suspend the proceedings for just a minute to welcome both of them to this meeting.

Would you come forward, Messrs. Hartsfield and Mattingly?

[Applause.]

[Short recess.]

Senator MATHIAS. The point of my question, really, was that if, as has been described, there was no previous testing of Senator Pressler, then you do not have the accurate, reliable knowledge about his state of mind, and if he was not [54] brought to the house on W Street with the understanding that something funny was going to happen, then you do not have the self-selection process, so there was a failure in meeting the Heymann test, in any event.

Mr. JACOBS. Certainly, Senator, if we had known that Silvestri had just met him a half-hour before and had had no conversations whatsoever about accepting money, that meeting never in a million years would have been approved. I think it was approved very reluctantly by Judge Webster to begin with, certainly by the Department officials. I cannot for the moment think that we would ever have had Senator Pressler come to the townhouse under the facts as we know them now—absolutely, 100 percent not.

Senator MATHIAS. From your comment, you obviously have a high opinion of Judge Webster's principles and his course of conduct, and I share that. In March of 1980, Judge Webster testified in the House of Representatives that,

> The FBI has adopted specific undercover policies and an extensive oversight machinery to ensure that each undercover operation is carefully planned and conducted.

Now, I have no doubt that that is what Judge Webster intends. But what you are telling us this morning is that it does not happen in real life; isn't that a fact?

Mr. JACOBS. Well, Senator Mathias, certainly as I have expressed before, the incident with Senator Pressler is [55] certainly a regrettable one, but I think on the whole, the way Abscam was conducted, and the fact that we have been able to obtain convictions in every one of the cases that we brought, certainly proves out the quality of the investigation. As I said, this one in particular, I think is an example of the fact that we could have done a little bit better job here in this particular case. I think looking back on it now, as I have testified, we could have taken some more time and not rushed into the particular situation that took place. I do not quarrel with Judge Webster's comments about the fact, and what took place here, as I said, was certainly regrettable.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Just pursuing on that same course, you really had some reason to have taken a little more time, because this was a change in direction in that you had been anticipating other individuals, and there was a change in the person who Silvestri was going to bring at the last moment; whereas in previous cases, you did not have that particular wrinkle, so you went forward.

Now, as to the timing, the amount of time it took to actually close the meeting, I watched the tape, and it occurred to me that while Amoroso, the undercover FBI agent, did not actually present any money to offer a bribe very sepecifically, that during the conversation, there were opportunities. There [56] was a bait dangled, so to speak, before Senator Pressler, and if he had been so inclined, he could have grabbed that bait and incriminated himself right there, which brings up the point, given the fact that he was brought there under false pretenses, as far as he was concerned, if he had in fact done something incriminating there or suggested that he might be willing to consider further or that he might even take the bribe, would that have been a case of entrapment? I am not an attorney, and I do not really know.

Mr. JACOBS. I do not believe so, Senator. I do not believe that under those facts, it would be. Certainly, as I stated before, had we known actually what had taken place between Silvestri and Pressler——

Senator HUDDLESTON. I understand that, but I am just thinking about even as the situation developed, the opportunity was there for him to take a bribe if he had been so inclined. Contrary to all the others that you brought in, he would have been brought there not with any idea that when he came into the place, this was a bribe situation. His understanding was it was a legitimate campaign contribution situation.

So my question is whether or not that would have changed the question of prosecuting the case on the basis that he was, in fact, enticed into or entrapped into a situation.

Mr. JACOBS. I would not think it would, and I would hope that the Department of Justice had—it obviously did not—but [57] any politician that had come into the room, whether they were aware what was going on or not, and accepted money and compromised their office, and walked out of the room, either with the money or knowing that the money was being given to a third person to corruptly sell their office, would be prosecuted by the Department. In this case, obviously, Senator Pressler knew the difference between right and wrong, and knew when a bribe was being offered, and realized and stated that he could not make any promises and would not do anything, as opposed to a number of other politicians.

Senator HUDDLESTON. Now, we have established, I think, during the course of this hearing, that a perfectly innocent person could be brought to this point, the point of the house, the point of actually being offered a bribe, under the mechanism that was established, under no other charge except the representation of a corrupt middleman, to the authorities. But it was always expressed to us that the operators had this final failsafe against dealing with an innocent person because they could terminate the meeting if they discovered during the course of this that the man obviously was there under false pretenses, did not think he came for the purpose of accepting a bribe.

But now, we see that even with those conditions existing, he still could incriminate himself; he still had the opportunity to accept a bribe. Even after your telephone call, if I [58] recall correctly, the course of the conversation was such that if he had been looking to receive some money under any conditions, willing to use the influence of his office, he had the opportunity to do it right there.

Mr. JACOBS. I think I disagree with you, Senator. After my phone call, which was the second phone call, Amoroso pretty much terminated any further discussions.

Senator HUDDLESTON. I may be confusing the two telephone calls because they were——

Mr. JACOBS. Yes. The first phone call, there were certainly discussions about money after the first phone call. I did not make that phone call. That was, I think, a wrong number or whatever it was.

Senator HUDDLESTON. Yes, you have indicated that. I did not know that until you testified. But at any rate, the so-called approval process does not preclude the possibility of a perfectly innocent person being brought before hidden cameras and being offered a bribe?

Mr. JACOBS. Well, under the circumstances, I certainly would agree with you, Senator. That is certainly a risk that the Department of Justice and the FBI were aware of at the time. It certainly was discussed at the time, and as a matter of fact, it was discussed about Senator Pressler in that half-hour or hour period that maybe we had the wrong person at that particular time. As I have testified to, there [59] was a lot of concern expressed by Department and FBI officials about it.

Senator HUDDLESTON. Now, Mr. Puccio testified that he was not aware and had not seen the FBI's guidelines for dealing with undercover operations, and he saw it of little consequence as far as his responsibility was concerned; his responsibility was to prosecute the case, I suppose, see that evidence was taken in such a way that it could be used in court, and that is legitimate. But is it you judgment that it is proper for the FBI to have such guidelines——

Mr. JACOBS. Absolutely.

Senator HUDDLESTON [continuing]. And that such guidelines might go beyond what is the absolute minimum required to develop a prosecutable case or to stay within the the rules of the courts in presenting evidence and so forth—in other words, they may have a legitimate reason to be a little more sensitive or a little more concerned than a prosecutor would be, who is thinking only in terms of "Have I got the proper evidence? Has it been obtained in such a way that I can present it in court?"

Mr. JACOBS. Well, Senator, as far as I understand—and perhaps Mr. Wheeler can correct me if I am wrong—there were two guidelines over the last several years. There were the Levi guidelines in effect until 1981, and then in 1981, new guidelines were established, and those new guidelines do provide for a much more active role by the strike force and [60] the U.S. attorneys' offices around the country with respect to these undercover projects.

Certainly, the fact that before they are given approval and things like that, the Strike Force Chief in the various Districts has to go along with it and things like that, I think, is certainly a positive step.

Senator HUDDLESTON. Yes. And I recognize, of course, that some of these guidelines were actually developed during the course of this particular undercover operation, and you would not have had an opportunity to see them before, because maybe they were not even written out at the time.

The point I want to make is that it seems to me that it would be very proper that when guidelines do exist—and now, we do have a set of, I guess, general guidelines, and they even might be altered for a specific operation—that there ought to be a clear understanding between the FBI operators, the agents, and the attorneys with the strike force. It seems to me they ought to review them together and say, "These are the rules of this particular game that we are playing."

Mr. Jacobs. Absolutely.

Senator Huddleston. You would not disagree with that at all?

Mr. Jacobs. Not at all.

Senator Huddleston. But it seemed to me that Mr. Puccio did not seem much interested in what the FBI's rules were; he [61] was more interested in what his rules were as to gathering evidence.

Mr. Jacobs. Well, I was not present for Mr. Puccio's testimony, but certainly, knowing that it is not unusual for defense lawyers in any criminal prosecution to bring up FBI rules and guidelines, I certainly would not condone, and I certainly would hope that all the FBI agents would carry out their rules and guidelines, and I certainly try to make it a point to try to be familiar with them, knowing that most of the time, in any litigation that I had with the Department of Justice, those rules and guidelines come right back to haunt you if they are not followed.

So it is certainly a good practice for the attorneys in the Department of Justice to be familiar with them, and any investigation that is being supervised by a Department of Justice attorney, that attorney should make sure that those guidelines are followed.

Senator Huddleston. But even in the Abscam case, do you feel that if there were specific instructions such as Judge Webster's instructions, that you should have been informed of that, Mr. Puccio should have been informed of that?

Mr. Jacobs. Well, Senator, I am not really aware of any specific instructions ever given by Judge Webster that were contrary to the instructions that I had in the field. Mr. Wheeler and I have a disagreement as to the interpretation of [62] that direction meaning the payment should be made directly.

I had a lot of meetings with high officials in the FBI and with officials in Washington within the Department of Justice, and that just was not discussed in those type of terms. I can only state that I am certain Judge Webster meant that the money had to be discussed openly, agreed to by the politician in his presence, and the physical requirement of the politician taking the money is not what he meant by the word, "directly".

Senator Huddleston. It seems to me, though, there is a lapse that you did not have this discussed prior to the event. I mean, if Judge Webster himself, the Director of the FBI, had written out this instruction, it seems——

Mr. Jacobs. Well, Senator, as I told Mr. Wheeler, I agree with the idea that if the FBI is going to communicate those types of instructions—and I know from looking at the FBI files after Abscam was concluded that my name is on a lot of communications authorizing certain payments. Certainly, it would probably be a good idea for the Department of Justice attorneys supervising it to see those communications. I agree with Mr. Wheeler's point.

Senator Huddleston. It seems to me it would be almost essential, and that would have been the time—I am sure, if the FBI man had said to you, "Look, Judge Webster said it has to be given to MacDonald," you probably at that point would have raised, "Well, does that mean that he has got to [63] hand it directly to him, or does that mean he just has to be in the room and has to be observing the transaction?" I mean that is a logical response.

Mr. JACOBS. Senator, had I seen that communication, I certainly probably would have raised that issue and gotten it clarified.

Senator HUDDLESTON. I believe you would have, right at the point, and it seems to me it is something of a lapse—maybe it is not of overriding importance at this time. But it just points to me to the necessity that both the attorneys and the FBI have an understanding of what rules they are playing under, because the interest of the attorneys can be somewhat different than the interset of the FBI, because you are looking at evidence, you are looking at rules of the court, and whatever, and he may be looking at some other things—sensitivity—he may be looking at the political aspects of a situation—I do not know—but at any rate, there could be some difference?

Mr. JACOBS. Well, certainly, if the Director of the FBI is going to give specific instructions that are handed down, I certainly think it would be a good practice to have the Strike Force attorney who is going to be in the field, supervising the case, to be informed about that direction.

Senator HUDDLESTON. Right. And in the case of Senator Pressler, did you see, or were you aware, of the notation [64] that Judge Webster had made on his authorizing memo, to be sure that the Senator knew that he was being bribed? This seems to be, from what we have heard, just a reiteration of what you were going to be sure of, anyhow.

Mr. JACOBS. Well, in the Pressler incident, I have a recollection of John Good speaking directly with Judge Webster before the meeting—it was not a very long time—and John Good then communicating to me Judge Webster's concern about the meeting.

Senator HUDDLESTON. So, that did alert you, then?

Mr. JACOBS. Oh, yes. I was alerted before the meeting took place that there might be potential problems.

Senator HUDDLESTON. Thank you.

Senator MATHIAS. We have a rollcall vote in the Senate. The committee will recess for 10 minutes.

[Short recess.]

Senator MATHIAS. The committee will come to order.

Senator Rudman?

Senator RUDMAN. Mr. Jacobs, the first thing I want to say to you is that, from looking at a number of the transcripts and records, certainly, I think we ought to appreciate the job you did as the assistant U.S. attorney. That was a difficult assignment. And we are not trying to find fault here. What we are trying to do is to see if we can develop anything that we have learned that might find its way either into legislation [65] or, more likely, into regulations and guidelines. And pursuing that thought, coming very briefly back to the Pressler incident, which it seems to me has been discussed in great detail, there is one aspect of it that came out today that is new, at least to my recollection, and I want to just review it briefly, because it bears on a more general issue.

Is it my understanding that the representation that Senator Pressler had, in fact, received the proper information that was a prerequisite, to have someone come in for a bribe, from Mr. Silvestri may have passed from Silvestri to Weinberg, and then to either you or Amoroso?

Mr. JACOBS. Yes, that may have been. Senator, as I sit here now, I do not recall the precise sequence of events, how the information was communicated. But certainly, the information was communicated to me and to John Good, because we were the ones who had to then act upon it and go through the various hierarchies that we had to deal with. I do not recall whether Amoroso personally spoke to Silvestri about it, or whether it was Weinberg at this particular point.

Senator RUDMAN. But it would be possible under the procedures that had been followed that it was in fact Weinberg who spoke to Silvestri and so forth?

Mr. JACOBS. Certainly.

Senator RUDMAN. So, it is possible—and we have no evidence because we do do not have tapes—that Silvestri, who I [66] understand has made several comments that he would like to appear before this Committee, may have told Weinberg something totally different from what Weinberg told Amoroso and told you. That certainly is in the realm of possibility—who knows—that is speculation, but that is possible.

Mr. JACOBS. Senator, I——

Senator RUDMAN. We cannot talk about probability, but it is possible.

Looking now at the entire operation, it seems to me, having read transcripts and listened to testimony and looked at this for the past several months, that there was more than a slight amount of evidence, that there is probably even, to use a term of art, maybe even some probable cause, to believe that Weinberg may well have shared in some of the brides that were in fact paid to politicians in this entire matter. I am thinking of the *MacDonald* case and a number of others, where there are very suspicious circumstances that would indicate that maybe he himself was sharing in some of these bribes. Did that cross your mind in looking over these records as you were dealing in these cases?

Mr. JACOBS. It did not have to cross my mind looking over the records. I had conversations with Weinberg about that during the course of the investigation.

Senator RUDMAN. Could you tell me what prompted those conversations?

[67] Mr. JACOBS. I knew Mel Weinberg's background, and I told Mel Weinberg on numerous occasions that under no circumstances was he to ever get any kickbacks from any of these people, because it certainly was something I was aware of could possibly happen. And I told him point blank that if he did that, he would be prosecuted.

Senator RUDMAN. The fact that you told him that, however, knowing Weinberg, was no assurance that he did not do it.

Mr. JACOBS. Senator, I certainly would agree with you on that, but I want to make it very, very clear that myself and Mr. Sharf, on a number of occasions—and I know I did that with Weinberg a lot—told Weinberg in no uncertain terms that he was not to play games behind our backs, and that if we found out that he did things like that, that he would be prosecuted like anybody else.

Senator RUDMAN. I am sure you did, Mr. Jacobs, because I have a high regard for your integrity and for your testimony here this morning. But my point is, unquestionably, there is evidence that exists that with all of those admonitions—which I am sure were given, and probably given by the FBI people, as well—there is more than a speck of evidence to indicate from these records that Mr. Weinberg well may have shared in the largesse that the FBI was passing around in these bribe offers.

Mr. JACOBS. Well, Senator, I do not necessarly agree [68] with you that that has taken place. I know that the allegations about Weinberg having done that have been investigated by various people within the Department. I did not participate in those investigations looking into that. I know they looked into that matter in the *MacDonald* case before the indictment was returned. I really could not comment, because I do not have a heck of a lot of details about what they did to look into the matter and what they have done with respect to that.

Senator RUDMAN. Well, subsequent investigation into the MacDonald matter indicated fairly clearly, at least to me as a former prosecutor, that there was a chain of evidence that indicated an alibi was being established with a representation of a tape recording, with a time certain spoken on that tape recording, followed by the discovery by the labs that there was a break in that tape recording, followed by the check of phone records by the New Jersey U.S. attorney's office, that the phone call took place, in fact, 3 or so hours later than Mr. Weinberg represented, all taking place during the time shortly after the MacDonald bribe was paid, in which Errichetti and Weinberg evidently met, or at least, there is a strong suspicion that they met. So, that kind of evidence to you as a former prosecutor—although certainly, at the time, you had other responsibilities—but looking at it now, that would give you reason to wonder why that was done, I assume. It gives me reason to wonder.

[69] Mr. JACOBS. It may give me reason to wonder, Senator, but I am still not convinced that Weinberg did that, and not having heard Errichetti's version of what took place, and having, at least, as I recall, DiLorenzo taking the witness stand in the Myers trial and not testifying to anything along that line, which he certainly had knowledge of and certainly would have helped Errichetti's defense at the time, leads me to believe that it may not have occurred.

I warned Weinberg repeatedly that taking money behind our backs—which was certainly something, as I said, that I was aware of—would wind up coming back to haunt him later on, because I knew the type of litigation that was going to be involved here in these Abscam cases, certainly in the courts, anyway. And he was told in no uncertain terms that that would be the first thing Errichetti would do when he was faced with a 10- or 20-year jail sentence, would be to come back and point the finger at him and tell the Department of Justice, or tell the public officials involved that, "I took a kickback."

I find it hard to believe with Weinberg's "street smarts," knowing the fact that all Errichetti would have to do would be to come back, walk into a courtroom, or walk in before you Senators and produce some evidence of that, and Weinberg would be up to his neck in a lot of trouble, that Weinberg would be that foolhardy to do something like that. As greedy as he is—and he is certainly a very greedy man—he [70] was told in no uncertain terms that that would be the first thing Errichetti would do upon being convicted. I have not seen Errichetti come forward yet to indicate that.

Senator RUDMAN. I accept that as being certainly persuasive on one side of the argument. The troubling part of it is that the meeting that allegedly took place was alibied with phone calls that took place at different times. So there was a conflict there. We do know, and I guess you know, and I want to know if you knew at the time that Mr. Weinberg in his previous experience with the FBI had been carrying on a scam operation while working for the FBI, and in fact, was fired at that time. Were you aware of that at the time?

Mr. JACOBS. I do not think at the time, I was. I think sometime later on during the investigation, we did talk about aspects of that. Weinberg told me enough about his background, and I spoke with the agents at enough length that I knew the type of person that he was. And it certainly crossed my mind that he would do something behind our backs.

Senator RUDMAN. Well, the point being that under a previous situation, I am sure with admonitions from somebody else at a distant time, he was probably told that, "When you are working for us, it is not nice to carry on your own scam," but he did anyway.

So I think we can establish, probably, that whether he shared in the bribes or whether he did not, there is some [71] evidence that suggests that maybe he did, and some evidence to suggest that maybe he did not, but the very fact that we are even talking about it indicates that he is not a terribly reliable human being.

Mr. JACOBS. Well, Senator, that was the purpose of having these meetings videotaped and having attorneys in the field, at least trying to supervise someone like Weinberg. Dealing with people like Weinberg is not unusual in a criminal investigation. I know from my own experience that I have dealt with a lot worse people who sometimes commit murders, make deals with the Government or with local prosecutors, and wind up being witnesses. It is part of the criminal justice system, and it is certainly a risk that every prosecutor and every law enforcement agent takes when they undertake one of these investigations is that the possibility exists that something like this may occur, and you try to minimize the risk as much as you can.

Senator RUDMAN. The difference, of course, between this and the cases you cite is that Weinberg was essentially set in motion where representations that he made or representations that people made who he was dealing with could very well put in motion a Pressler kind of an incident; that is one of the things that——

Mr. JACOBS. Well, Senator, the safeguards that I referred to were of a practical nature with Weinberg at various times, concerning this misrepresentation that would go on back and [72] forth. Weinberg knew that the cameras were rolling, obviously, during the course of all these meetings. And as I have just testified, he was certainly told that when someone faces a lengthy jail sentence if they are convicted, the first thing they are going to do is point their finger at anybody they can, and if you have done something wrong, more than likely, they will find some evidence of that, and you will be the one sitting at the defendant's table.

Senator RUDMAN. Of course, you had to admonish Mr. Weinberg after his coaching session with Senator Williams——

Mr. JACOBS. That is correct.

Senator RUDMAN. That was totally outside of the sphere of what you thought was responsible, in terms of how he was to prepare for these meetings.

Mr. JACOBS. That is correct.

Senator RUDMAN. In addition to that, you at some point must have learned that in the so-called Ellis matter, involving the Garden State Raceway—this involved the New Jersey U.S. attorneys—there was not only a coaching session, but evidently, there was a whole scenario that was built up in which Ellis was to come in and almost immediately start bragging about the fact that he could bribe politicians, because that was the only thing that McCloud would listen to. And of course, that is precisely what Ellis did, because he was coached to do it, and then subsequently recanted and said [73] that, well no, all that he said at that time was false. You are familiar with that?

Mr. JACOBS. Somewhat. I am certainly a lot more familiar with the coaching session with Senator Williams.

Senator RUDMAN. Well, it was similar. In fact, they were similar, and it even carried beyond. So, after going through this discussion, this dialog, Mr. Jacobs, I just want to pose this question to you, because this really is, I think, the central question that we are really faced with here—maybe the only question we are going to be faced with.

Under the guidelines, there are two safeguards. The first safeguard is that it is assumed that a representation has been made in which a willing public official says he will take a bribe. That representation is repeated without tape recording, without notes, and so forth, and based on that, it is the FBI's policy that will bring the person in.

The second safeguard is that obviously, if he is innocent, he will not take the bribe, and you will not make the bribe, if it becomes apparent that he did not even know why he was there, which is exactly what you did in the Pressler case, and you acted very properly. Whether you should have acted 5 minutes sooner or not, as you said, 2½ years later, that is very hard to conjecture about.

The question is, the first safeguard, is it really a safeguard when you are dealing with Weinbergs and do you [74] in fact need some better form of corroboration so that incidents such as the Ellis incident, which could have turned into something else, the Pressler incident, which did not turn into something else, can be prevented—or, do we in fact insulate our whole system of constitutional safeguards from even being operable by having people like Weinberg out there, who have the capacity, for whatever reason, to put events in motion that the Bureau is not even aware of? What is your thought? You have dealt with this. You were there. And that is what we are wrestling with, and it is not an easy question.

Mr. JACOBS. Well, I think probably the most significant safeguard that we have here, Senator, is the manner in which the actual bribe is communicated to the public official. One of the guidelines that I am pretty certain we followed, even though we dealt with maybe hundreds of politicians sometimes on a causal basis, was that under no circumstances were the agents to go out and solicit, go out and directly meet the politicans and just offer them bribes; that middlemen were the people we dealt with. And to some extent, I think that is even a better safeguard, using the middlemen, than having the FBI directly make determinations about who they are going to go out and solicit, who they are going to go and meet, and things like that.

There is certainly a risk factor involved in using a [75] Weinberg, and certainly, we were aware of the risk. The fact is that, by and large, the politicians that we eventually met with, offered them money on videotape, have been convicted by juries; extensive due process hearings have been held, and certainly, no Government misconduct has been found out, I think there is the quality of the investigation.

I think in any investigaton there are certain risks. I think that the risks were to some extent minimal here, because of the fact that we were dealing here with—I do not want to even call them targets—but dealing here with people, by and large, who were sophisticated, intelligent, and certainly, there was every opportunity for these public officials to avoid the pitfalls of Abscam. And if the politician was foolhardy enough to agree to a behind-the-scenes payment to Weinberg, it even makes the politician more corrupt that he would be that audacious, or whatever would be the case, to even go behind the informant's back and make a side deal. Even assuming that Errichetti would do something like that—and I am not certain that that took place—I think that Errichetti gets deeper and deeper involved in his own mess that he has created.

So I am not even certain what the significance is, other than the fact that obviously, it is certainly not something that is acceptable to the Department of Justice that an informant works behind the Government's back. But certainly, the rules [76] that we set up, that Amoroso, once in the meeting, had to make the offer clear, had to make the understanding clear, had to make it clear to the politician that he would be performing some illegal act, is a tremendous safeguard, and this safeguard has resulted in all the convictions that have taken place. I cannot think of a better safeguard than to have the meeting videotaped, giving the politician every opportunity in the world to explain his position. Some of them obviously were greedy enough to commit illegal activity, and on the rare occasion that we had someone come in who was an honest citizen, they were intelligent enough to realize there was something going on and walk out of the meeting.

So I think there were safeguards that were here. Obviously, they could have been improved—of course, they could have been improved. I would be a fool to sit here and say that the investigation was perfect.

Senator RUDMAN. My time is up, but in the Pressler case, in looking at the videotape, and listening to your testimony—and I do not mean to be flippant about this, but it is almost the attitude, "Well, we have rented the room, we have the equipment, it is a shame to let it go to waste, and let us just get somebody off the street." That is almost the way Silvestri acted in this case—that is the way Silvestri acted, and you reacted because you thought he was telling you the truth which, of course, he did not.

[77] Mr. JACOBS. Senator, I think it is probably just the opposite of being flippant. If I convey anything——

Senator RUDMAN. I did not say you were being flippant; I said I did not want to appear flippant.

Mr. JACOBS. We were terribly upset about the whole way the Pressler thing was going about, and there was a lot of concern whether we should even meet with them. But we figured that, weighing everything at the time, that if Silvestri were really truthful, and he was bringing a U.S. Senator in who was going to take $50,000 on videotape, that we were not going to say no and start being selective because, well, Senator Pressler happened to go to law school with Larry Sharf, or Judge Webster happened to have met him and had high regard for him. We were not going to start being selective that way, and I think that was one of the reasons that we felt, well, we are not going to start making judgment decisions on someone's reputation as opposed to what we were doing on a daily basis. If the middleman said he would bring in the politician, and the representation was made that the politician was going to perform illegal activity, well, we were going to damn well go out and do it, instead of starting to pick and choose who we were going to meet and who we were not going to meet.

I think, looking back on it, that is the correct philosophy. Whether we could have improved the facts as we had them with [78] Pressler, I think we should have. Looking back on that, we probably could have taken another day or so, or maybe stalled for a little bit more time, and things like that. But not to have met Pressler for personal reasons that Judge Webster might have had or someone in my office would have had, I think would have been totally wrong. We certainly were not going to do it on that basis. We should have pushed Silvestri a little harder; I cannot argue with that.

Senator MATHIAS. Senator Rudman, your time has expired.

Senator RUDMAN. Yes, about 5 minutes ago. Thank you, Mr. Chairman.

Senator MATHIAS. Senator McClure?

Senator MCCLURE. Mr. Chairman, thank you.

You have indicated that you were upset about the way the Pressler matter evolved and that you should have taken more time. If you had taken more time, what would you have done?

Mr. JACOBS. Well, first of all, I certainly would have had Silvestri come over to the townhouse, explain how he met Pressler, who provided the introduction, what was said to Pressler, what was Pressler's understanding—just gone over it in some more detail. Obviously, if there was a tape, listened to the tape—you know, anything along that line would have probably been better than what we did under the circumstance.

But unfortunately, as I recall it now—and I hope I am [79] correct, and I think I am—he said, "Well, I am here with Pressler, and we will be over within the hour," or something along that line. In other words, he had already lined him up, and we were in the type of situation where we had to either do something or not do something, and I think that is why we were rushed into the decision. I think, had he said, "I can arrange a meeting for Pressler. Would you like me to do it, and he will agree to take the money?" we would not have said, "Come right over with him."

Unfortunately—and this was, as I said, very, very regrettable—the way Silvestri presented it to us was that, "Well, I have him here. We are about to come over. Is it OK?" And I think it forced the Department of Justice to make a decision a little too quickly under the circumstances.

Senator McClure. I think that is an easy statement to make now, but I am not convinced that there was anything that you would have done differently. The FBI, testifying last week, indicated as you have indicated today, you were not going to be selective. If the middleman said, "I have this guy, and I am going to bring him in," you were going to have the meeting and find out. And as I understand, the only check that was really done in this case was to run the trap line which was required by the guidelines, which proved to be pretty largely meaningless—they are ceremonial, rather than real—and to, in addition, look in that process to what was [80] usually done, get out the handbook and see if there really was a Senator Pressler, and you determined that there was a Senator Pressler, so go ahead and have the meeting. I think that would have occurred if you had taken an hour. It would have occurred if you had taken a day.

Mr. Jacobs. Well, Senator, I am not certain I agree with you in the sense that I think that the Department of Justice and the FBI have learned a lot from Abscam. I do not think that the lessons of Abscam go on deaf ears. And certainly, in any political corruption investigation that is being run now, I am certain that they are very circumspect about what they do. We like to think we were during the Abscam investigation.

As I said, I think Pressler was probably more of a rushed type of situation than any of the other cases because of the way it was presented.

Senator McClure. I am sure it was a rush, but I have not been convinced, I have not seen from the evidence that you would have done anything different if you had had more time.

Mr. Jacobs. Well, you will have to ask Judge Webster that question because ultimately, he is the one who authorized the money.

Senator McClure. I understand that.

Mr. Jacobs. And I am certain that if Judge Webster were presented with the situation tomorrow that a middleman was representing that a Senator would be over in half hour, "What [81] should we do?" he might sit back a little bit and wait before he said, "OK, you can have the money."

Senator McClure. OK, he would wait and then say, "OK, you can have the money." That is my point. I do not understand where there is anything else that has been identified that you would do. The FBI said last week, as an example, that they are dealing in many instances with corrupt middlemen who do not know they are dealing with an undercover police agent, law enforcement official, and that they are not going to blow that cover by questioning them too much about, "Where did you meet this guy? How did you know him? Why are you bringing him in? Are you sure that he will take the bribe?" and that, in order to avoid creating the doubts in the mind of the corrupt middleman, you simply go ahead and have the meeting.

Mr. JACOBS. Well, Senator, I can only state that, looking back now, we probably could have had Silvestri come back and "stall" Senator Pressler, quote-unquote, for some short period of time. We probably should have done it, and maybe it would have avoided the meeting. But certainly, I do not know how you correct that situation, other than the fact that the Department of Justice attorneys and the FBI people monitoring the investigation just have to make absolutely certain in their minds that the middleman is stating truthfully what he is stating.

Senator MCCLURE. But you are dealing with people who do [82] not tell the truth. How do you make absolutely certain that they are telling the truth? You have extended that as kind of an assurance to us that in the future, they will make sure the man is telling the truth, but you are dealing with men you cannot be sure are telling the truth.

Mr. JACOBS. Senator, it is a balancing test in any criminal investigation, and there are certainly risks involved, and the ultimate safeguard—and I am certainly not quarreling with you; it certainly was never the intention of the Department of Justice, or my intention, or the agents that I work with, just to bring people before the cameras and it did not matter to us whether they were going to take a bribe or not take a bribe, because I certainly realized right from the beginning of this investigation that anybody who walked out on us, we were going to have a problem with later on. And we tried to make every effort that we would to make sure that the only people coming into that meeting were people who understood what was going on. I was not naive enough to realize that at some future point if we met a U.S. Senator, and he walked out of a meeting, and we offered him a bribe, that sooner or later, we would not have necessarily questions being asked what the heck we were doing.

Senator MCCLURE. Now we are getting pretty close to what I have been fearful in this entire investigation, and that is the implication that because a U.S. Senator is [83] involved, we are going to be more careful with him than we would with an ordinary citizen. That is not the purpose of the investigation, as far as I am concerned. It is easy to make that assurance. But I think every one of the members of this panel are just as concerned that Joe Doe out there, who is not in a position to cause any difficulty for anybody, gets treated just as fairly as those who are "in powerful places."

Mr. JACOBS. Well, Senator, all I can say is that the ultimate review of this type of situation—cases are tried before juries, and juries render verdicts. I would like to feel, at least, that the Abscam investigation produced the type of quality results that it has.

As I said, I think probably the biggest unfortunate circumstances surrounding all of this were the leaks that took place that clouded a lot of things that have happened here.

I think that——

Senator MCCLURE. If there had not been any leaks, we would not have had the Pressler matter?

Mr. JACOBS. Well, the Pressler matter would have been there. I am certain at some time, the matter certainly would have been made known to Senator Pressler and certainly would have come out during hearings and litigation that took place involving defendants that were under indictment. So I do not think the Pressler matter ever would have disappeared; it certainly always would have been there. But certainly, Senator [84] Pressler's name should never have been released the way it was by whoever did the leak of the material.

Senator MCCLURE. I agree with that, and that is troublesome. Leaks are always a matter of problem. But that is the way this town operates. If there were no leaks, we would close down, and you know that, and I know that. So they do happen, and we have to have procedures and policies that are based upon the realism that that does occur, as reprehensible as that is. And to me, that is as reprehensible as anything that happened in this whole thing, is the matter of the leaks.

And I am not trying to say that holding the meeting was in every instance wrong. I am trying to get at whether or not there is a way you can avoid having those meetings if, as a matter of fact, there is a corrupt middleman who is not telling the truth. I have not yet seen a way to avoid that. I have not seen anything that you have said with respect to the Pressler matter, other than the fact that you would take more time, that gives me any assurance that, having taken more time, it would have come out differently.

Mr. JACOBS. Senator, in a long operation, which Abscam was, and the fact that you are going to, over a course of a period of time, meet with a number of politicians and use a number of middlemen, in any criminal investigation, you always have the risk involved that someone may be brought into it. And as I said, I felt, and I still feel, there were sufficient [85] safeguards here in this particular case. I do not think any prosecutor is ever going to make an assurance that an investigation is going to be 100 percent foolproof. There are acquitals that take place thousands of times, every day in this country, and that does not mean that the prosecution should not have been brought. People sometimes spend a long time in jail, waiting to be tried in this country and then are acquitted, and they have been innocent. But that does not mean that prosecutors should shirk from their responsibility to investigate and try cases.

Senator MCCLURE. Let me turn just to the other issue that seems to me to be unresolved—I am not sure we have resolved that one, but we have exhausted it—and that is, what is the responsibility of the law enforcement agency once an innocent person's name has been leaked and is involved, or is brought out in the course of the litigation with respect to other people, and the name gets bandied about in the press? Does the government have a responsibility to provide the information that is necessary to clear that person, if indeed you are satisfied that there is not evidence sufficient for an indictment?

Mr. JACOBS. Well, Senator, in the course of my work, which basically only involved some of the trial of these actions, there are methods to cure that type of problem, such as redaction of tapes and instructions to prosecutors and [86] defense lawyers that this type of information is not revealed. I am certain that there are probably a lot of people who were involved in Abscam whose names still have not come out—I would hope so. But the point is that there are methods whereby this can be done.

Frankly, the question of whether, certainly, public officials have to be informed of what they have done, or cleared, is really something that I do not feel I am an appropriate person to address that to. Maybe some people who are in high levels of the Department of Justice that make that type of policy decision are involved. Certainly, as a prosecutor, I have always made it my practice, and most of the judges that I have tried cases in front of have always made it the practice where, whether it is a politician or not, if there is some innocent third party mentioned on the tape for whatever reason, and the case is at all noteworthy, that those names are redacted, usually. And it is certainly a good practice that most prosecutors apply, and most judges will readily accede to that type of request.

Senator McClure. If, as a matter of fact, it gets beyond that and into the public domain, have we in the government discharged our responsibility by saying, "We did what we could to keep it from becoming public knowledge. Now it is just tough luck," to the guy that got involved?

Mr. Jacobs. Well, Senator, I think probably the only **[87]** suggestion that I could make is probably that the only method to ever do something like that would be on a case-by-case type of basis. I feel that to make some sort of a guideline or a rule or a legislative requirement that any time an innocent person's name comes out, that a law enforcement body is required to make a statement puts a very difficult burden, because many times in criminal cases, there is this "Never-Never-Land" between a person who is completely innocent and someone that a prosecution can be brought on. Sometimes, it is clear. Obviously, with someone like Senator Pressler, the bribe was refused. He walked out of the room, and there is no question that he never agreed at any point to accept any money or to be influenced, but——

Senator McClure. And it took him over 2 years before he could get an unequivocal statement, in spite of the fact that you now say it was clear when he walked out, he was innocent. We now say that, every one of us, but it took better than 2 years for him to get that kind of an unequivocal statement out of the Director of the FBI and out of the Justice Department.

Mr. Jacobs. Senator, I am certain you do not mean something should be done during the investigation; I think you probably mean afterward.

Senator McClure. Yes—whenever the Justice Department becomes satisfied that there was no reason that that person's **[88]** name should ever have been linked to the investigation at all.

Mr. Jacobs. Senator, it is very difficult for me to talk about policy about something like that. Certainly, on some cases, that type of statement should be made. I do not know it there can be a hard and fast rule with respect to it. It really depends on the case. I cannot give you an explanation as to why the Department of Justice waited, did not wait. I was not involved in that decisionmaking process. Certainly, some cases might warrant a statement to be made immediately. Some cases might warrant a statement never to be made. I do not know if I can give you an intelligent response as to what should be done and should not be done. Any criminal case, you have that type of risk. Some people are found not guilty after a jury verdict, but yet, they are not innocent. The prosecutor may not have been able to prove their guilt beyond a reasonable doubt. That does not mean I would qualify them as being innocent. I have tried cases where I have gotten a few acquittals, and it does not necessarily mean that I ever believed that the person was innocent. I might have lacked some proof or something along that line. So, it is very, very difficult to hold a prosecutor to that type of obligation, even though in some cases, it should be done.

Senator McClure. Well, the only reason I mention it in this case is because it seems to me we can distinguish this kind of case from other criminal investigations in that a [89] corrupt middleman known to be capable of telling, fabricating facts, telling lies involving innocent people, has been utilized by government, set in motion by government, would not have been there in this instance except for the action of the government, that perhaps government has a little different responsibility with respect to the outcome of that action than they would in other circumstances.

Mr. Jacobs. Senator, you may be 100 percent correct with respect to this type of incident, and I guess I am just the wrong person to address that to. I was not in the position to make a statement or not make a statement or anything else on that line. Perhaps the question would be more appropriate to other officials within the Department of Justice or the FBI.

Senator McClure. I do not think it is more appropriate. They may feel more able to answer.

Thank you, Mr. Chairman.

Senator Mathias. I just have one question because it is sometimes instructive to compare one situation with another to see how the procedure works, and that is, after all, what this committee is trying to do.

In the Pressler matter, as you sat there and watched the video screen, you concluded that this was a dry run; that nothing was going to happen, that it ought to be terminated, and you called Agent Amoroso, and you told him that, and as I understand your testimony, he agreed with you. So you said, [90] "All right, let us terminate it."

In the Kelly case, you were in the same position. You were watching the video screen, and had the headset on. And that was not a dry run. That was proceeding toward success—success as defined in these terms. But you still made a call.

Mr. Jacobs. Uh-huh.

Senator Mathias. Why did you make the call in the Kelly case? I think it is obvious why you make the call in the Pressler case, but why did you make the call in the Kelly case?

Mr. Jacobs. I think there is one very, very critical difference in the two cases. In the Pressler case, the middleman was sitting there at the meeting, and it was obvious in the representations that had been made earlier, and especially what Silvestri said when he said, "I just met Senator Pressler," and that did not come up until sometime into the tape, at that particular point, John

Good and I came to the conclusion that obviously, Senator Pressler did not know what was going on.

In the Kelly case, Kelly was alone in the room with Amoroso and said, "I do not want any money," or some words to that effect.

All I did in the Kelly case was to tell Amoroso, "Go back and have Kelly speak to Ciuzio" who was the middleman in that particular instance. "Let's find out what is happening. [91] Does Kelly know what is going on?" Well, they went back, Kelly spoke to Ciuzio, walked in and said, "I will take the money." So in that particular instance, there was a very significant difference. The middleman, Silvestri, sitting with Senator Pressler, indicated that Senator Pressler did not know what was going on. Kelly, by himself, said at one particular point, "I am not interested in the money." That was contrary to what we had been told, what was on tapes, and things like that. So all Amoroso did was, "Gee, Congressman Kelly, why don't you speak to Ciuzio, and let's see what is going on here." Ciuzio said, "He'll take the money"; Kelly walked in and said, "I'll take the money," and then took the money. So I think that there is a significant difference in the set of facts that were there.

Had Ciuzio been seated in the room with Kelly and said, "Kelly does not know what is going on. He is not a party to this. I never talked to him about any bride", I would have done the same thing and terminated the meeting.

Senator **Mathias**. If you had not called—and this is a hypothetical question—but if you had not called, what do you think would have happened?

Mr. **Jacobs**. Well, Amoroso basically had a pretty good feel for how these things were going. It was not unusual for Amoroso to ask to have various people speak to other people, so I would assume Amoroso would have done what I suggested [92] anyway.

Senator **Mathias**. Senator Rudman?

Senator **Rudman**. Just one question. Were you in the Plaza Hotel in January when Senator Williams was offered a bribe?

Mr. **Jacobs**. No, sir.

Senator **Rudman**. You were not?

Mr. **Jacobs**. No, sir.

Senator **Mathias**. Senator McClure?

Senator **McClure**. Nothing further.

Senator **Mathias**. Counsel?

Mr. **Neal**. No questions.

Senator **Mathias**. Since there are no further questions for Mr. Jacobs, the committee will take a 1-hour recess. We will resume at 1:30.

[Whereupon, at 12:25 p.m., the committee was recessed, to reconvene at 1:30 p.m. this same day.]

[93] AFTERNOON SESSION

[Whereupon, at 1:50 p.m., the committee was reconvened, Hon. Charles McC. Mathias, Jr., presiding.]

Senator **Mathias**. The committee will come to order.

Our witness this afternoon is Mr. Irvin Nathan, a former Deputy Assistant Attorney General of the United States.

Mr. Nathan, have you received a copy of Senate Resolution 350?

Mr. NATHAN. I have seen it, Mr. Chairman.

Senator MATHIAS. And have you received a copy of our rules of procedure in this committee?

Mr. NATHAN. I am afraid I have not, but I am agreeable to proceeding without having seen them.

Senator MATHIAS. Well, we will see that a copy is delivered to you forthwith.

Mr. NATHAN. Thank you.

Senator MATHIAS. You will see that under those rules, all testimony must be under oath.

Mr. NATHAN. Fine.

Senator MATHIAS. So if you will rise and raise your right hand, I will administer the oath.

Mr. NATHAN. Fine.

Senator MATHIAS. Do you swear that all the testimony that you will give before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. NATHAN. I do.

[94] Senator MATHIAS. Are you prepared to give us a brief statement of your participation in the Abscam operation and other undercover operations?

Mr. NATHAN. I have, Mr. Chairman, submitted to the committee and to your counsel a prepared statement, which I would request be included in its entirety in the record.

Senator MATHIAS. Without objection, the entire statement will be included as if read.

Mr. NATHAN. Thank you.

[The following was received for the record:]

PREPARED STATEMENT OF IRVIN B. NATHAN

Mr. Chairman and members of the committee, I welcome the opportunity to appear before you to discuss the fairness and propriety of the undercover investigation known as Abscam, which was conducted by the FBI, and the resulting prosecutions which were handled by attorneys in the Department of Justice.

From late January, 1979, through January, 1981, I served as a deputy assistant attorney general in the Criminal Division of the Justice Department. Prior to that date, I was a partner in the Washington law firm of Arnold & Porter, and I returned to that position after my government service. One of my responsibilities while serving as a deputy to Assistant Attorney General Philip B. Heymann was to monitor and attempt to coordinate the prosecutions resulting from the FBI's undercover investigative work in Abscam.

In my judgment, Abscam was a fundamentally fair, proper and effective law enforcement operation, consistent with over 50 years of legal precedents handed down by the Supreme Court and other federal appellate courts. Sharing with this Committee an abiding interest in the full preservation and protection of Constitutional rights and civil liberties, I firmly believe that all who became involved with Abscam were accorded the full measure of due process of law and that no one's Constitutional rights were violated or infringed in this operation.

In concluding that the operation was fair, proper and in accordance with legal precedents, I am not saying that Abscam was flawless. This was an operation which spanned more than three years, required the coordination of activities in at least six different states and involved scores of FBI agents and operatives as well as prosecutors from at least four separate offices. It would be surprising indeed if such an operation were conducted perfectly, without any mistakes; obviously some mistakes were made and improvements can be envisioned in the future. Indeed, before leaving government service, I insisted that a full internal evaluation of Abscam and other extensive undercover operations be conducted so that lessons for the future could be drawn and improvements suggested for future operations. I am, of course, prepared to address the problem areas which surfaced in Abscam, but I urge this Committee not to allow the relatively minor imperfections to obscure the basic fairness, propriety and success of the Abscam operation.

In assessing the fairness of the Abscam operation, I commend to the Committee the unanimous jury verdicts and the uniform Court of Appeals' decisions which have affirmed the convictions reviewed by them. As you know, Abscam resulted in eight separate jury trials in three different jurisdictions. Ninety-six jurors—men and women drawn from every segment of our society—were presented with all of the evidence relating to the interaction between the government agents and the defendants. Most of the evidence was graphically displayed to the jurors on audio and video tapes. The defendants were ably represented by eminent defense counsel; every argument and every tactic within the law were fully available to them. Yet, without exception, every one of the 96 jurors concluded that every defendant charged by the government had been proved guilty beyond a reasonable doubt. There was not a single hung jury, not even a holdout. In returning their swift and unanimous verdicts, not a single juror indicated that there had been any entrapment, any overreaching or any other unfairness by the government.

In my judgment, the successful outcomes of the jury verdicts in every one of the Abscam trials are the result of the competence, dedication and courage of the FBI agents who worked under great stress and pressures in the field as well as the professionalism, diligence and skills of the career prosecutors who marshalled and presented the evidence to the juries. Any alleged mistakes, problems or lapses of judgment which are explored in your hearings must be placed in that basic context.

Both before and after the trials in Abscam, the courts conducted an exhaustive autopsy into the Abscam operation. Not only was virtually every government file turned over to the courts for detailed review, but the defense was permitted to call as witnesses and cross-examine virtually every participant in the government's operation including informants, FBI agents, FBI supervisors, trial prosecutors and all of their supervisors, up to and including the Assistant Attorney General for the Criminal Division. I believe that no other law enforcement operation has ever been subjected to such a comprehensive and searching analysis. On the basis of that full and complete record, every Court of Appeals which has reviewed an Abscam case has given its unqualified imprimatur to the government's conduct.

In affirming the jury convictions in Philadelphia, the United States Court of Appeals for the Third Circuit, en banc, in a seven-to-two opinion, ruled that the government's operation in Abscam was valid and lawful, that the government did not engage in overreaching or a deprivation of the defendants' rights to due process of law and that the jury's rejection of the claim of entrapment was fully justified by the evidence.[1] It may further be noteworthy that the Supreme Court recently declined to review the affirmance of those convictions.

Rejecting defense contentions of government overreaching, the Third Circuit admonished anyone reviewing this operation not to gloss over the salient and inescapable fact presented by the video-taped record: the "defendants accepted the money readily, unprotestingly, even casually, without ever once attempting to use their consummate political skill to say, as diplomatically as the circumstances required, 'Thanks, but no thanks.' "[2] In my view, this observation applies to every one of the Abscam cases.

In that passage, the Third Circuit echoed the earlier unanimous decision of the Second Circuit Court of Appeals in *U.S.* v. *Myers.*[3] In that case, decided before trial, Judge Newman, a former chief legislative aide to a United States Senator, speaking for the unanimous panel, rejected the argument that the concept of Abscam was unconstitutional. Judge Newman stated: "Any Member of Congress approached by agents conducting a bribery sting operation can simply say 'No.' Each Member's capacity to reject bribe opportunities could be regarded as sufficient safeguard against the risk that the Executive Branch would successfully use these tactics for political reprisal."[4]

In still another Second Circuit decision, affirming two of the Abscam convictions, former Chief Judge Irving Kaufman, speaking for a unanimous panel, found that the government's conduct was legitimate and fair law enforcement.[5] Expressly concluding that there was "no violation of [defendants'] rights under the Due Process Clause of the Constitution," the Court stated that "There are any number of cases . . . where the claim [of overreaching] has been rejected despite the presence of more pervasive Government participation than in this case." [6] The Second Circuit went on to cite a number of Supreme Court and other federal cases which had upheld convictions "despite the presence of purported Government effort to gather evidence which was far more extensive than anything alleged to have occurred in" Abscam.[7] Pointing out the extreme difficulties of detecting and proving consensual crime such as bribery committed by intelligent, sophisticated individuals, the Court observed that our jurisprudence has long "permitted Government agents, in the public interest, to employ artifice to apprehend public servants who abuse the trust invested in them by virtue of their positions." [8]

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[1] *United States* v. *Jannotti,* 673 F. 2d 578 (3rd Cir. 1982) (en banc).

[2] Id. at 606.

[3] 635 F.2d 932 (2nd Cir. 1980).

[4] Id. at 939.

[5] *United States* v. *Alexandro,* 675 F.2d 34 (2nd Cir. 1982).

The District Judge who was most familiar with Abscam is Judge George Pratt of the Eastern District of New York, who was recently nominated and confirmed by the Senate to serve as an appellate judge on the Second Circuit. Judge Pratt tried four of the eight Abscam trials and conducted the lengthiest post-trial due process proceeding. After examining all of the evidence and all of the briefs submitted by defense counsel, Judge Pratt summed up his views as follows:

"While the government's conduct of the [Abscam] investigation was not flawless, the overall work of the FBI, of the Eastern District Strike Force and of their superiors in the Department of Justice reflects a moderate, fair, careful approach to an undercover investigation which suddenly and unexpectedy proved effective in uncovering corruption in Congress." [9]

I believe this conclusion is amply supported by the record. Indeed, for completeness of the record of these proceedings, I request that the three Court of Appeals decisions and Judge Pratt's 45-page decision rejecting all claims of violation of Constitutional rights be made a part of this record.

As you know, Judge Bryant has reached a different conclusion in the case of former Congressman Kelly. I understand that the government has appealed Judge Bryant's ruling and, having analyzed it, I believe that the Court of Appeals will reverse that decision and reinstate the jury's verdict.

The courts and juries are not the only independent bodies which have had an opportunity to review and comment upon the Abscam operation. The ethics committees of both houses of Congress had ample opportunity to examine the FBI's conduct in the course of their reviews of the conduct of former Senator Williams, former Congressmen Myers, Jenrette and others. The Senate Ethics Committee, after examining all of the available evidence, unanimously recommended the expulsion of Senator Williams. Similarly, the House Committee on Standards and Conduct, after a similarly thorough review of all of the relevant Abscam files, called for the expulsion of Congressmen Myers and Jenrette. Nowhere in their reports is there even a hint of criticism of the FBI operation or the conduct of the Department of Justice in this matter. In fact, the Report of the Special Counsel to the Senate Select Committee expressly concludes that the due process contentions were "not supported by the evidence." More particularly, after analyzing all of the evidence, the Report found nothing to support claims that (i) Senator Williams was improperly targeted; (ii) that the Government conduct was overreaching; or (iii) the government investigation was inadequately supervised or documented. The Report concluded: "In sum, there is no basis on which to conclude Senator Williams has been the victim of a due process violation. . . ." (See Report of Special Counsel to Senate Select Committee on Ethics, August 13, 1981, pp. 97–100).

Recognizing that the Committee has already received testimony concerning the origins, progression and day-to-day functioning of the Abscam operation, I will simply highlight some of the features which convinced me, and apparently the reviewing courts, of the basic fairness of the Abscam operation.

First, there was no targeting. There was no hit list. No one in the Executive Branch, in Washington or elsewhere, ever sat down and pre-selected public officials at whom the Abscam operation was to be directed. Indeed, as you know, Abscam began as a routine property sting operation and evolved naturally, unexpectedly, and without predesign by the Government into an area of public corruption, first at the state level in New Jersey and then to the Congressional level. All of the public officials who became involved in Abscam came into the operation as a result of the representations and actions of corrupt middlemen. These "bagmen" boasted to people they believed were fellow criminals (but who actually were Government agents) about their ability to produce these public officials for illegal actions, sometimes supporting their claims by citing past illegal ventures. The absence of any common thread linking the seven Congressmen found guilty underscores the lack of any governmental selection process. They came from five different states in the East and had widely differing politics.

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[6] Id. at 40.

[7] Id. at 41.

[8] Id. at 34.

[9] *United States* v. *Myers, et al.*, 527 F. supp. 1206, 1251 (E.D.N.Y. 1981).

Conversely, no political official was put off limits; no allegation, regardless of the party, power or position of the official involved, was disregarded as too hot to pursue. As one Court said, "Uncontroverted testimony established that no prospect was rejected or vetoed either by the agents or by higher authorities in the Justice Department." When a corrupt middleman, who had participated in criminal ventures with the undercover operatives, claimed that he could produce a public official to take a bribe, he was invariably invited to live up to his claim. The bagman was told that he would have to produce the allegedly corrupt politician in person and that the politician would have to acknowledge both the bribe and the services he would personally perform for it.

This was an important consideration for the Third Circuit which specifically found that "there is no evidence that the Government targeted either [defendant] in advance. Their names emerged from discussions with [a corrupt middleman] on whom the Government relied for [his] 'proven ability to enlist corrupt politicians. . . .' "[10] Judge Pratt also found, after examining all of the evidence, that he was "convinced that the defendant Congressmen appeared through a 'self-selecting' procedure. . . . The agents did not set out to offer bribes to any particular Congressmen. . . . Instead, the middlemen . . . carried the word that money was there for the taking by any Congressman who would promise to give legislative aid. . . ." The Court found the record clear that "those defendants who appeared and accepted bribes were not 'targets' in the sense that any Government agent selected them for some sort of 'honesty test'; instead each was a willing volunteer seeking illegal and corrupt payments."[11]

Second, every meeting with a Congressman or Senator was taped in its entirety. The videotapes make it abundantly clear for the juries, the courts, the public and this Committee to see that there was no ambiguity in the proposals offered to the Congressmen. Every statement, every blandishment, every facial expression, every body movement by all of the participants was in plain sight for the jury to see, hear and consider. The videotapes make clear that there were no pressures brought on any public official; there was no badgering, no threats, no harassment, no appeals to friendship or duty and no attempts to play on the weaknesses of an innocent party. All of the meetings occurred outside of the public official's office or home at a place—often an unpretentious hotel room—and at a time—often late at night—when normal Congressional business is not conducted. The meetings were usually accompanied by packages filled to the brim with thousands of dollars in $100 bills. In short, there was no possibility of any ambiguity.

The Third Circuit specifically commented on the unique fairness to all parties presented when the transaction is entirely videotaped. The court commented that ordinarily a jury has no opportunity to hear and see the words, voice inflections and nuances of statements and actions made by a defendant or other participants, including government agents and informants. Abscam, the court found, was "unique in that through the videotape the jury could observe the entire criminal transaction and many of the events leading up to it. It could observe whether the defendants demurred or showed any reluctance when the money was handed to each of them. The jury could observe the amount of pressure, overt or tacit, if any, placed on the defendants to accept the bribes. In short, this jury had in its hands some of the most valuable tools possible with which to conduct its inquiry . . ."[12]

Third, I think that the inducements offered by the Government in Abscam were commensurate with the political favors being sought and were modeled—to the extent it is possible for law-abiding citizens to know—on real-world conditions. Most of the cash bribes offered were in the neighborhood of $50,000. That figure was initially set by one public official, later convicted, and at least one other public official complained that this amount was inadequate. Further, in most of the cases, the amounts were to be divided among several people, usually leaving the public official with less than half of that amount. These amounts were comparable to those contained in prior reported judicial cases in which private citizens had paid bribes to corrupt officials who were then convicted. In those cases, the amounts paid ranged from $20,000 to $100,000. In the case of Senator Williams, the amounts of money discussed were substantially higher. However, it is important to emphasize a number of factors in order to demonstrate that in context the inducements offered in that case were reasonable. First, the amount of the multi-million dollar loan sought from the mythical Arabs was established by the Senator and his co-defendants, not by the government representatives. Second, the money sought was a loan to be repaid at a substantial rate of interest. Third, the value of the stock which the Senator received in the transaction was speculative, and while it was variously described as having the potential to be worth millions, Senator Williams testified that he thought the stock to be virtually worthless. Finally, a coconspirator in the case testified that the Senator was interested in a payment from the undercover operatives of a few thousand dollars, so long as it could be funneled through intermediaries, in order to purchase an automobile for a relative or a horse for himself. This incident demonstrated that it was not the amount of money that was critical but rather the willingness to barter political influence for personal gain.

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[10] *United States* v. *Jannotti, supra* at 609.

[11] *United States* v. *Myers, supra,* 527 F. Supp. at 1226–7.

[12] *United States* v. *Jannotti, supra,* at 604.

Fourth, I believe that the FBI was justified in investigating on the basis of allegations made by corrupt influence peddlers to other individuals who they believed were also corrupt private citizens. It appears that one of the principal concerns of this Committee's hearings to date has been the "reliability" of the so-called "middlemen." In my judgment, the pursuit of the information provided by the unwitting middlemen was justified both in theory and in fact.

In the first place, the government did not "rely" on the middlemen in the sense that it gave credence to their information or was willing to bring charges based on such information. The government simply took the position that information supplied by the middlemen under these circumstances warranted investigation by a technique which was designed to demonstrate quickly and dispositively the truth or falsity of the middleman's assertions. If a totally unknown individual were to raise an allegation of corruption against a public official, that allegation should, of course, be fully explored, even if there is a substantial chance that the allegation is a fabrication. There could be many conceivable reasons why an individual would fabricate such an allegation to the authorities, but no responsible investigator would simply ignore the assertion. How then could the investigators in Abscam have failed to pursue allegations coming from people with whom they had dealt in the past and who appeared well versed with the world of political corruption?

The middlemen had substantial reason to tell the truth to the fictional Arabs' purported representatives. First, they had established continuing corrupt relations with these representatives and presumably desired to continue them as long as they proved profitable. If the middlemen repeatedly supplied incorrect information, the relationship, along with the anticipated reward, would be damaged or destroyed. Second, they were advised that they would have to produce the public officials for blatant offers of bribes. The middleman had every incentive not to allow himself and the public official to be embarrassed.

Common sense demonstrates that a middleman would not normally approach a public official, either previously unknown to him or known to him to be an honest individual, and offer a corrupt transaction. Not only would the middleman's overtures be rejected, but he would also face the serious risk of being reported to the authorities, arrested and prosecuted. Of course, there was the risk that the middlemen would try to scam the public official, not informing him of the corrupt nature of the transaction. But such a risk is minimized by the middleman's knowledge that at the required meeting with the undercover operatives, the public official would be fully informed of the corrupt proposal. There would, of course, be considerable embarrassment if at such a meeting the public official were to protest complete ignorance about the proposed corrupt transaction and storm out. This would jeopardize the middleman's future status with both the public official and with the "Arabs' representatives." If a middleman brought an innocent public official to such a meeting, he would have to be concerned not only that the official would inform the authorities but also that the "Arabs' representatives" might seek retribution, including the possibility of physical harm to double-dealing middlemen. These would not be risks lightly run.

The proof that these theoretical safeguards work in practice is revealed by an examination of those public officials who actually appeared at a meeting with the undercover operatives upon the representation of a middleman that they were willing to take bribes. Of the 19 public officials who appeared at such a meeting with the undercover operatives who were authorized to offer bribes, 15 either took the proffered money or otherwise agreed to engage in a corrupt transaction. Of the remaining four, some, such as Senator Pressler, clearly had not been apprised beforehand of the nature of the meeting and indicated no interest in pursuing the matter; a couple of others were much more ambiguous, perhaps indicating a natural inclination for caution. However, even accepting all four as breakdowns of the safeguards, the success rate of the middlemen at such meetings was approximately 80 percent—that is, 80 percent of the public officials brought into meetings with the undercover operatives by the middlemen proved themselves ready and willing to engage in the proposed corrupt transactions. I suggest that it is inescapably clear that the middlemen knew which public officials were corrupt, that the middlemen responded to the built-in disincentives by producing, for the most part, public officials who were disposed toward corrupt transactions and that the government was fully justified in pursuing the information provided by the middlemen.

In addition to the few public officials who appeared at a meeting but did not appear informed about, or interested in, a corrupt transaction, there were several more public officials that middlemen represented were prepared to come to such a meeting. Offers to pay money to such a public official was authorized only when the FBI Director was informed in writing that a corrupt middleman had unequivocally reported to others who he believed equally corrupt that the public official was ready and willing to accept such a payment in return for a promise of political influence. By authorizing the approach and offer, the Director gave the named public official an opportunity to vindicate himself either by not showing up at all or by declining the offer.

I know that the named public officials who never appeared and those few who appeared but were uninterested in the proposition were sincerely offended that Judge Webster authorized offers to be made to them if they appeared at meetings with undercover agents as represented by corrupt middlemen. I also recognized and regret that those innocent few who appeared at a meeting suffered some inconvenience and embarrassment. Yet, I ask them and this Committee to consider the alternative: if Judge Webster has said that he did not want the matter pursued as to these Congressmen, that he did not want these particular Congressmen invited to a meeting, or that if they appeared, no corrupt offers would be made to them, critics, upon learning these facts, would later have claimed that these Congressmen had used their influence to abort an investigation of them. In effect, the allegations would have been covered up and the reputations of both the Congressmen and the FBI would have been sullied.

The damage, if any, I suggest, to the reputations of those Congressmen who never even appeared for the meetings or who appeared and rejected overtures stems not from Judge Webster's internal authorization to his agents but from the publicity about these matters several months later in the news media. Some, such as Senator Pressler, released the news themselves. In most other cases, there were deplorable leaks from the Government. Such leaks can occur in any kind of a sensitive investigation involving public officials, including ones in which an agency's role is limited to investigating past conduct in which the Executive Branch had no role. There is absolutely no excuse for the leaks, which the Attorney General attempted to track down to the fullest extent of his powers. However, the leaks and the unfortunate consequences for innocent individuals should not obscure the fact that the basic concepts and execution of the Abscam operation were fair and that Judge Webster's confidential authorizations of contingent offers in and of themselves did not damage any Congressman who exhibited the honesty and good sense to disregard the entreaties of the corrupt middlemen.

I also ask this Committee to weigh the harm suffered by those few public officials—which I do not minimize—against the enormous benefits derived by the public and the Congress by uncovering and prosecuting more than a dozen powerful corrupt public officials. I urge the Committee not to ignore the fact that Abscam resulted in the removal from the Government of a large number of corrupt public officials, including six Congressmen, one Senator, one mayor of a large city (who was also a state senator), three Philadelphia city councilmen, and an inspector of the Immigration and Naturalization Service. (In addition, a former commissioner of a state gaming board was indicted as a result of Abscam but died before trial.) The direct, public benefit is that people who were willing to sell their offices no longer hold those offices. There is also the intangible benefit that other public officials who may be contemplating such corrupt activities will have to consider the serious consequences of dealing with individuals who may turn out to be government operatives. Finally, there are the benefits which the public derives from being made more conscious of the dangers of public corruption and of the willingness of its investigating and prosecuting authorities to combat political corruption, regardless of the power or prominence of the individuals involved. I submit that these benefits far outweigh the inconvenience or embarrassment suffered by a relatively small number of public officeholders who were unfairly drawn into this investigation by corrupt middlemen.

Fifth, it is noteworthy that in Abscam there was no use by the Government of the most intrusive law enforcement techniques. For example, there were no wiretaps sought or used in which all parties to the conversation are unaware that they are being taped. There were no search warrants used to invade anyone's privacy or to obtain personal papers. There were no invasions of anyone's home or office. There was no effort to turn relatives or other close confidants of public officials into informants against them. Virtually all of the evidence came from statements and promises volunteered by public officials to third parties whom they barely knew and whom they trusted to maintain their silence.

Sixth, in judging the propriety of this operation, it is appropriate to consider the difficulty of the task which Congress itself has given to federal law enforcement officials. Congress has determined that bribery of any federal official is to be a felony carrying substantial penalties. However, bribery is essentially a secretive and consensual crime. It is generally not committed before any witnesses other than the bribor and the bribee who have a vested interest in maintaining their silence. Even if the crime is detected, the problems of proof are substantial. In the usual case, the jury will have to choose between the word of an admitted participant in a bribe, usually a bagman with limited credibility, and the word of a prominent, distinguished and often eloquent public official of theretofore unblemished reputation. Further, the Supreme Court's decisions interpreting the Speech or Debate Clause of the Constitution place additional impediments in the way of federal prosecutors attempting to establish bribery against an accused Congressman. In *United States* v. *Helstoski*, 442 U.S. 477 (1979), the Supreme Court held that in light of the Speech or Debate clause, there can be no reference in the Government's prosecution for bribery to legislative acts performed by a Member of Congress. Thus, in proving past acts of bribery, the prosecution can prove that money passed (the guid) but may not introduce evidence of the official act (the quo). While the Government can still bring in the bribor to testify about the promise made by a Congressman in return for a payment, the avowedly corrupt bribor is not likely to enjoy much credibility. Clearly, the best evidence of a corrupt Congressman's promise to engage in a future legislative act in return for money is his own statement recorded on tape, and those can be obtained only through undercover techniques.

It is instructive to compare Abscam with Koreagate, which when it was initially disclosed was touted as involving "the most sweeping allegations of congressional corruption ever investigated by the federal government." In Koreagate, the House Committee on Standards of Official Conduct issued a report in which it specifically concluded that Korean officials had made illegal cash payments to a number of Congressmen in order to obtain influence in Congress. Although there were initial reports that as many as 115 members of Congress (including two later convicted in Abscam) had taken illegal payments from South Korean agents, the Committee found that it could not substantiate charges against a single Congressman because neither the Korean officials nor the Congressmen involved would admit to paying or receiving a gift. Not a single Congressman was censured; one pled guilty to one count of conspiracy to defraud the government; no others were convicted.

The Supreme Court has long recognized that in considering the legitimacy of law enforcement tactics, the courts should consider the difficulty of detection and proof. Where, as here, "the gathering of evidence of past unlawful conduct frequently proves to be an all but impossible task," the Supreme Court has sustained infiltration and extensive undercover operations as appropriate law enforcement techniques which are fully consistent with "fundamental fairness" and "a universal sense of justice." [13]

The techniques in Abscam were no different in kind from those used and judicially approved in many other sting operations employed by local, state and federal law enforcement agencies for decades. The techniques have proved effective and been generally applauded by the public—including the Congress—for their role in interdicting drug traffic, in recovering stolen property and in combatting organized crime. Indeed, the contemporaneous and fundamentally similar Brilab operation resulted in a felony conviction of a widely reputed kingpin of organized crime in the South, who had eluded federal prosecution for decades. As a matter of public policy and effective law enforcement, there is, in my opinion, every reason to employ the same techniques to ferret out and deter public corruption. Indeed, I suggest that the deterrent effect of this type of operation may be even more powerful in the area of public corruption. I am confident that neither this Committee nor the American people desire different sets of law enforcement standards and which are dependent in any way upon the social status, economic condition or power of the lawbreakers involved.

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[13] *United States* v. *Russell*, 411 U.S. 423, 432 (1973).

Seventh and finally, I think it is important to stress the procedural due process which was accorded to every putative defendant both within the Justice Department and thereafter within the judicial system.

When the FBI concluded its undercover operation in early February, 1980, prosecutors from the Criminal Division and the United States Attorney's office in Washington, Philadelphia and New Jersey took over responsibility for compiling and evaluating all of the evidence which had been collected. Theretofore, the prosecutors in the field had served principally as legal advisers to FBI agents who conducted the investigation reporting exclusively within the FBI chain of command to FBI superiors. At this point, the career prosecutors in each jurisdiction were directed by Assistant Attorney General Heymann to analyze all of the available evidence and make written recommendations to him. As part of this effort, the Assistant Attorney General ordered that the informant and FBI agents be available for debriefings by all of the prosecutors from all of the jurisdictions involved so that everyone would have comprehensive knowlege of what had occurred during the FBI's covert investigation. Assistant Attorney General Heymann requested each prosecutor to make known to him all material facts bearing on his ultimate decisions of whether to seek indictments and, if so, against whom and on what charges.

After analyzing all of the evidence, the career prosecutors prepared extensive memoranda setting forth the proof and theories of prosecution, delineating the likely defenses and describing any perceived impediments to a successful prosecution. These memoranda were circulated to all Abscam prosecutors in other jurisdictions for their comments and observations. Each was encouraged to provide any additional information and comments which might bear on Assistant Attorney General Heymann's decisions. After carefully analyzing the memoranda, Assistant Attorney General Heymann and I viewed each of the pivotal videotapes, some of them several times, and other pertinent evidence, including on occasion audio tapes. Thereafter, with respect to each proposed indictment, Assistant Attorney General Heymann convened a meeting of career prosecutors from all of the offices involved (including the prosecutors from New Jersey who attended every such meeting except the one discussing Senator Williams) to assess the strengths and weaknesses of each case and the operation as a whole. At each of these meetings, all of the prosecutors were encouraged to set forth all of their information and views.

Before making a decision on whether or not to indict, Assistant Attorney General Heymann invited counsel for each potential defendant to submit either in writing or orally any evidence or arguments tending to show that indictments should not be sought. Several defense counsel availed themselves of this opportunity, but none ever suggested the existence of any facts of which the government was not aware.

In the preindictment, and indeed in the pretrial, stage none ever suggested that there had been unrecorded conversations that cast a different light on the video and audio tapes in the government's possession. None suggested that their clients had been tricked, fooled or coerced by any government operative. Not a single one claimed to us that their client had been told by a middleman that the proposed transaction was a sham or involved "play acting."

After being advised of Assistant Attorney General Heymann's decision, several defense counsel requested and were granted an opportunity to appeal his decision to Judge Renfrew, the Deputy Attorney General at the time. Judge Renfrew, who had served ten years on the federal bench after a distinguished career in private practice, met with all defense counsel who requested an opportunity and gave careful consideration to their arguments. In all cases, he affirmed Assistant Attorney General Heymann's decisions.

In short, the review process in the Criminal Division was open-minded, fair and thorough. The detailed written memoranda and oral presentations of career prosecutors, many of whom had served in the government for more than ten years, were subjected to meticulous review by three non-career professionals—a litigator who had spent more than ten years in private practice, a renowned Harvard professor of criminal law, and a distinguished former District Court Judge. In addition, we had the counsel and assistance of Judge Webster, who had earlier served with distinction both as a District Court and as an appellate court judge in the Eighth Circuit.

With confidence that the basic concepts of the Abscam operation were fair and legitimate law enforcement methods and with knowledge that the evidence of guilt against the potential defendants was overwhelming, the Assistant Attorney General had to decide what weight, if any, to give to the imperfections and problems which had by this time been identified in the FBI's undercover investigation. These problems included the alleged receipts of gifts and kickbacks by the informant from one of the potential defendants; the absence of memorialization by FBI agents of certain events and alleged conversations; the alleged loss by the informant of certain audio tape recordings near the end of the covert phase of the operation; and issues relating to the informant's compensation from Abscam, including alleged representations concerning bonuses as well as an alleged book contract. Each of these issues was explored thoroughly, though in some cases, the facts were murky and inconclusive. For example, it remained unclear whether one of the potential defendants had in fact given to the informant during the course of the covert operation, certain electronic equipment, which the informant had not reported to the FBI.

There was no effort then or now to gloss over or condone certain mistakes or lapses in judgment which may have occurred during the covert investigation stage. But the key point, then as now, is that none of these alleged activities or occurrences violated or infringed anyone's Constitutional rights; none of them tended to exculpate or even mitigate the clear evidence of guilt of any of the proposed defendants; and none of them altered or in any way affected the fundamental fairness of the Abscam operations as it applied to any potential defendant.

The problem areas warranted attention for the future, but they did not warrant aborting the operation or foregoing prosecutions. The Abscam operation as well as certain other extensive, multijurisdictional and prolonged undercover investigations provided some valuable lessons concerning both the positive features of such law enforcement methods, and the problems likely to be encountered in running and coordinating them. Accordingly, in the fall of 1980, I recommended to Assistant Attorney General Heymann and FBI Director Webster that a high-level task force of FBI officials and Criminal Division supervisors be created to make an intensive review of Abscam, Brilab and other similar investigations. The purpose of the effort was to record the lessons of our experience and to make concrete recommendations for improvements in future operations. As a result, such a task force was created and spent months in diligent pursuit of a detailed examination of these operations. One of my last actions within the Department, in late January, 1981, was to submit a 100-page report to the Deputy Attorney General and to the Director of the FBI detailing the task force's findings and recommendations. The report, which was ably written by Robert Luskin, a Special Counsel in the Organized Crime and Racketeering Section, identified the issues which are likely to arise in future large-scale, multijurisdictional undercover operations and suggested approaches to those issues which will tend to promote efficency and fairness in these operations in the future.

In my view, the most important recommendations for the future include the following:

1. When, as is usually the case, the use of an informant is necessary to the success of an operation, he should be made fully aware at the earliest practicable time of the nature of his responsibilities, the limits on his authority, and the amount of his compensation.

2. Whenever possible, the operation should be designed to minimize the participation of informants, or at least to provide for their early replacement by undercover agents.

3. Better procedures should be established to monitor the informant's conduct for compliance with Department and Bureau policies and to guard against possible self-dealing. These procedures might include careful monitoring of the informant's whereabouts, review of telephone records and the use of pen registers, as well as sanctions for violation of instructions.

4. When electronic surveillance is used, adequate procedures should be established to ensure that as many conversations as can be recorded, consistent with security measures and other practical exigencies, are recorded; and that the recordings are promptly collected, logged and made available for review. A mechanism should be established so that appropriate Department of Justice and FBI personnel can, when necessary, contemporaneously review recordings of significant encounters between subjects and undercover agents.

5. Where appropriate in multi-jurisdictional investigations, both the Department and the Bureau should appoint Washington-based coordinators who will have responsibility for ensuring adherence to government policies, for resolving problems between investigators and prosecutors and for overseeing the direction and scope of the investigation.

In addition to these largely procedural matters, the report also covered most of the substantive suggestions which have now been embodied in the Department's published undercover guidelines.

The principles followed by the investigators and prosecutors in Abscam and certain other extensive undercover operations conducted in the same period were refined and incorporated into a detailed set of guidelines promulgated by outgoing Attorney General Civiletti in January 1981. These guidelines will govern any sophisticated undercover operation conducted in the future. The guidelines, with which the Committee is fully familiar, establish elaborate review procedures within the Department of Justice and mandate certain criteria designed to minimize any possible unfairness to private citizens. In my view, the most important aspects of these salutary guidelines are those which require that (1) the corrupt nature of the proposed transaction be made clear to potential subjects; (2) there be reasonable indication that the undercover operation will reveal illegal activities; (3) the inducement offered is justifiable and appropriate in view of the character of the proposed illegal transaction; and, above all, (4) the proposed operation be "based solely on law enforcement considerations."

I know that this Committee may well have additional amendments to suggest to the undercover guidelines. I believe such suggestions would be useful and would be well received by the Department. One reasonable amendment to the guidelines which I believe is warranted by this Committee's review of Abscam to date is a requirement that there be new approval sought from the Undercover Review Committee once an ongoing operation begins to move in a new direction which raises a different set of sensitive factors. Thus, if Abscam had originally been approved under the guidelines by the Undercover Review Committee as a sting operation designed to recover stolen property, it would have made sense to require the investigators to seek additional authority from the Undercover Review Committee once the operation moved into the area of investigating political corruption.

However, I urge that the guidelines, as augmented by suggestions from any responsible source, be continued as "guidelines" and not enacted into law by the Congress. The guidelines should remain flexible to cover a wide variety of situations. Undercover operations take many forms and are adaptable to many different kinds of crimes. Further, guidelines should be changed from time to time to reflect the lessons of experience and to deal with previously unforeseen problems. These changes should be made by those with the greatest experience in implementing the guidelines and carrying out undercover operations. It is unlikely that Congress would have the time, motivation or expertise to amend the guidelines in the future to deal with unforeseen and unforeseeable problems.

Further, I believe that the guidelines should be enforced internally by the Department, as overseen by appropriate committees of the Congress, and should not generally be enforceable by criminal defendants. In the first place, many of the guidelines are designed for the protection of innocent bystanders and the public generally and not for the protection of a defendant charged with a federal offense. Second, allowing a defendant to explore compliance with internal guidelines—no matter how tangential or remote from his own situation—would be extremely disruptive and needlessly time-consuming. Third, as the Supreme Court observed recently in *U.S.* v. *Caceres*, 440 U.S. 741 (1981), giving private rights to criminal defendants to enforce internal guidelines or regulations may well be counterproductive since agencies will refrain from memorializing or establishing a full set of guidelines. Fourth, there may be situations where noncompliance with a particular guideline served the public interest and caused no prejudice to the defendant. If a violation or series of violations of the guidelines are sufficiently egregious and prejudicial to the defendant, he will presumably be able to raise a due process challenge to his indictment or conviction. It seems to me that the Constitutional protections presently afforded to criminal defendants are sufficient and that the guidelines themselves should be enforced only through internal, administrative sanctions. In my view, a criminal should not be allowed to escape punishment when the Department fails in some way to adhere to the well-intentioned and extremely detailed set of internal guidelines.

I would also like to comment briefly on two legislative proposals which appear to have stemmed from Abscam. One calls for changing the law of entrapment; the second would require a judicially issued warrant before permitting the government to commence an undercover operation or to engage in a corrupt transaction with a target. Both proposals are, in my view, unwarranted and unwise.

Entrapment is a judicially-created defense, in which the courts have focused on the intent or predisposition of the defendant to commit the crime. Under the prevailing so-called "subjective" theory of entrapment, the jury is essentially called upon to determine whether a defendant was ready and willing to commit the crime once an opportunity was presented or whether the defendant was not predisposed but was induced to engage in criminal conduct by overreaching or other improper pressures exerted on him by government agents or those acting in concert with them. The Supreme Court has repeatedly rejected the "objective" theory of entrapment, under which a particular defendant's predisposition is irrelevant and the court inquires only whether the police conduct in a particular case falls below articulated standards.

Heretofore, the Congress has consistently, and I believe appropriately, left the matter to the courts. The courts' response has been eminently sensible. By focusing on a particular defendant's predisposition to commit a crime, the subjective theory punishes only the morally culpable, without setting criminals free because the government's conduct has fallen below certain standards. Those rare cases where government conduct is outrageous can be handled under a due process analysis, without incurring the costs of the objective theory which sets criminals free even when the government's conduct has been less than outrageous.

The advantage of the subjective theory is that it permits the jury to examine all of the circumstances of a given case, including any special weaknesses which a particular defendant may have and upon which the government may have played. The objective theory, on the other hand, would uphold inducements as proper whenever a normal, law-abiding defendant would not have succumbed while ignoring the fact that the defendant on trial may be abnormally sensitive to the inducements offered. Conversely, if the police may hold out only inducements that are not likely to entice reasonably nonpredisposed citizens into crime, the wealthy and powerful classes will be immunized because what is reasonably likely to lead ordinary citizens into crime may have no effect on a wealthy, predisposed criminal.

In short, I believe that the courts have done a fine job of fashioning the entrapment defense to deal with individualized cases while at the same time providing an additional constitutional defense based upon due process of law in the rare case where the government's conduct exceeds legitimate bounds. There has been no indication that these defenses have failed to serve our society and legal system well, and I urge the Congress to adhere to its consistent position of leaving this matter to the courts.

Similarly, I believe that Congress should leave to the Executive Branch the decision of when and under what circumstances to commence an undercover operation. When the police set up an undercover operation, they are unlikely to know the identity of the criminals involved, much less be able to demonstrate probable cause or even reasonable suspicion about a particular person. All that they are likely to know is that there is a serious crime problem afoot and that without undercover techniques they are unlikely to be able to identify and capture the culprits.

For example, the police may know that there has been a series of muggings in a particular park but have no idea who has committeed them. It will only be after a policeman dresses up like a vulnerable, elderly person and a mugger is caught in the act that the police will be able to identify the criminal. If some evidence of guilt is required before the undercover operation is permitted to commence, such crimes are likely to go unsolved.

One could argue that probable cause or even reasonable suspicion can be garnered from an individual's past criminal activities and reputation. The problem with such an approach is that it would expose only the "criminal classes" to undercover operations and would effectively insulate all persons who have no prior record of criminal activities. Persons with theretofore untarnished reputations would be virtually immunized from undercover operations, which may be the only law enforcement tactic available to detect certain crimes.

Certainly a warrant requirement is not needed to prevent police from going off on a wild goose chase with slight prospects of success. As a general rule, law enforcement officials, in times of scarce resources, will not commit manpower and money to a particular scheme unless they have been alerted to the dangers of a serious crime problem and believe they are likely to be successful in capturing the individuals involved.

A warrant requirement does not serve any sensible purpose for most types of undercover operations. For example, if a narcotics undercover agent announces that he intends to purchase heroin and in response a prospective seller appears, it makes very little sense to require the agent to get a warrant before consummating the transaction. The seller either has the heroin for sale or he does not. Similarly, in a fencing sting operation, there is no justification for requiring a warrant before permitting the undercover agent to deal with a particualr thief seeking to dispose of his stolen goods. Not only would such a requirement serve no clear societal interest, but it would be very hard for the undercover agent to explain why he could deal with some thieves but not with others.

One jurisdiction which had established a probable cause standard for undercover operations recently reversed its position because, as the State Supreme Court found, "the requirement has proven more difficult in its application than originally believed and no longer should be an additional burden upon the law enforcement officials." (*Harden* v. State, 358 N.E. 2d 134, 135 (Indiana, 1976)). As the experience in that state demonstrated, the best protection is a review by the courts after the undercover operation is completed to ensure that no defendant's rights have been violated. Such an examination should be made in the full context of the completed operation.

I am confident that when the final judicial reviews of Abscam are completed, the courts will bear out my conclusion that the operation was, on the whole, conducted fairly and properly. I am also convinced that if, as I expect, the Department's guidelines are adhered to in the future, the public will be the beneficiary of sophisticated undercover operations which are fair to all of our citizens and which are effective in combatting public corruption and other forms of serious crime which threaten our society.

Thank you.

[95] STATEMENT OF IRWIN B. NATHAN, FORMER DEPUTY ASSISTANT ATTORNEY GENERAL, CRIMINAL DIVISION, U.S. DEPARTMENT OF JUSTICE

Mr. NATHAN. I would also like to make a brief summary of my statement for you and the other members of the committee and counsel.

Mr. Chairman and Senator Simpson, I welcome the opportunity to be here today to discuss a number of matters relating to undercover operations, including the Abscam operation. I want to say at the outset that I believe that this committee has gone about its responsibilities in a very professional and responsible way, and it has focused on some important issues, and I would like to assist the committee in looking forward to dealing with some of the problems that have been raised and dealing with future matters.

I also, however, would like to express a little concern that I have with respect to the treatment of the Abscam operation. I think it is natural in a situation like this that you focus on certain of the problem areas, because you are looking forward to dealing with the future——

Senator MATHIAS. Let me assure you that your expressions of approbation and your expressions of concern are equally welcome.

Mr. NATHAN. Thank you. And I want to focus in the [96] beginning of my statement on the Abscam operation itself and to emphasize my view that Abscam was a fundamentally fair, proper, and extremely effective law enforcement operation, which was consistent with over 50 years of legal precedents of the Supreme Court and other Federal appellate courts.

I firmly believe that all who became involved with Abscam were accorded the full measure of due process of law, and that no one's constitutional rights were violated or infringed in anyway.

Abscam was not flawless. This operation spanned more than 3 years, required the coordination of activities in at least six different States, involved scores of FBI agents, and prosecutors from at least four separate offices. It would be surprising indeed if such an operation were conducted perfectly, without any mistakes. Obviously, some mistakes were made; improvements can be envisioned in the future, and I am prepared to discuss the problem areas and to discuss with this committee proposed improvements for the future. But I urge this committee not to allow what I believe are relatively minor imperfections to obscure the basic fairness, propriety, and overwhelming success of the Abscam operation.

First, I commend to this committee the unanimous jury verdicts and the uniform court of appeals decisions which have affirmed the convictions reviewed by them. Ninety-six jurors were presented with all of the evidence relating to the **[97]** interaction between the Government agents and the defendants. Most of the evidence was graphically displayed to the jurors on tape. Without exception, every one of the 96 jurors concluded that every defendant charged had been proved guilty beyond a reasonable doubt. There was not a single hung jury. There was not a hold-out among the jurors. In returning their swift and unanimous verdicts, not a single juror indicated that there had been any entrapment, any over-reaching, or any other unfairness by the Government. Your Chief Counsel, who is a preeminent prosecutor and a superb defense counsel, can advise this committee of what it means to have eight trials and have success with every defendant and not a single hung jury.

Before and after the trials in Abscam, the courts conducted an exhaustive autopsy into the operation. On the basis of the full and complete record, including most of the things that you have gone over in these hearings, every court of appeals which has reviewed an Abscam case gave its unqualified imprimatur to the Government's conduct.

In *United States* v. *Myers*, which was decided before the trial, Judge Newman, who had previously been a chief legislative aide to a senior Senator, speaking for a unanimous panel, rejected the argument that the concept of Abscam was improper or unconstitutional. Judge Newman stated—and I quote—"Any Member of Congress approached by agents conducting **[98]** a bribery sting operation can simply say 'No.' Each Member's capacity to reject bribe opportunities could be regarded as sufficient safeguard against the risk that the Executive Branch would successfully use these tactics for political reprisal." End of quote.

The district judge who was most familiar with Abscam is Judge George Pratt. After examining all of the evidence and all of the briefs, Judge Pratt summed his views up this way, and I quote again: "While the Government's conduct of Abscam was not flawless, the overall work of the FBI, of the Eastern District Strike Force and of their superiors in the Department of Justice reflects a moderate, fair, careful approach to an undercover investigation which suddenly and unexpectedly proved effective in uncovering corruption in Congress." End of that quote.

I would like in the remainder of my testimony to describe some of the features which convinced me, and I believe, the reviewing courts, of the basic fairness of Abscam.

First, there was no targeting. There was no one in the executive branch who ever preselected public officials at whom the operation was to be directed. Indeed, as you know, Abscam began as a routine property sting operation and evolved naturally, unexpectedly, into an area of public corruption, first at the State level and then at the congressional level. Every one of the public officials who **[99]** became involved in Abscam came in as a result of the representations of corrupt middlemen.

Conversely, and I believe equally importantly, no political official was put off-limits. No allegation, regardless of the party, power or position of the official involved, was disregarded as too hot to pursue.

Second, every meeting with a Congressman or Senator was taped in its entirety. The videotapes make it abundantly clear for the juries, the courts, the public, and this committee to see that there was no ambiguity in the proposals offered to the Congressmen. There were no pressures brought on any public official. All of the meetings occurred outside of the public official's office or home at a place and at a time when normal congressional business is not conducted. The meetings were usually accompanied by packages filled to the brim with thousands of dollars in $100 bills. In short, there was no possibility of any ambiguity.

Third, I think that the inducements offered by the Government in Abscam were commensurate with the political favors being sought and were modeled, to the extent it is possible for law-abiding citizens to know, on real-world conditions. Most of the cash bribes offered were in the neighborhood of $50,000. That was a figure that was set by one public official, and at least one other public official complained the amount was too low. Further, in most of the cases, the [100] amounts were to be divided among several people, usually leaving the public official with less than half of that amount.

Fourth—and I know this is a matter of considerable concern to this committee, and I want to address it in some detail—I believe that the FBI was justified in investigating on the basis of allegations made by corrupt influence peddlers to other individuals who they believed were also corrupt private citizens. In the first place, the Government did not "rely" on the middlemen in the sense that it gave credence to their information or was willing to bring charges based on such information. The Government took the position that information supplied by the middlemen under these circumstances warranted investigation and warranted investigation by a technique which was designed to demonstrate quickly and dispositively the truth or falsity of the middleman's assertions.

The middlemen had substantial reason to tell the truth to the fictional Arab's purported representatives. First, they had established continuing corrupt relations with these representatives and presumably desired to continue them as long as they proved profitable. If the middlemen repeatedly supplied incorrect information, that relationship, along with the expected profit, would be damaged or destroyed. Second, they were advised that they would have to produce the public officials for blatant offers of bribes. The middleman had [101] every incentive not to allow himself to be embarrassed and the public official to be embarrassed at such a required meeting, and there would be considerable embarrassment if, at such a meeting, the public official were to protest complete ignorance about the proposed corrupt transaction and leave. It would jeopardize the middleman's future status with both the public official and with the Arab's representatives. If a middleman brought an innocent public official to such a meeting, he would have to be concerned not only that the official would inform the authorities and arrest the middleman, but also that the Arab's representatives might seek retribution, which could include physical reprisal.

Now, the proof that these theoretical safeguards work in practice is, in my view, revealed by an examination of the reactions of those public officials who actually appeared at a meeting with the undercover operatives during Abscam upon the representation of a middleman that they were willing to take bribes.

Of the 19 public officials who appeared at such a meeting with the undercover operatives who were at that time authorized to make an offer of a bribe, 15 of those public officials either took the proffered money or otherwise agreed to engage in a corrupt transaction. That is a percentage of an 80 percent success rate in relying on the middleman's representation.

[102] Now, even assuming all four who did not agree to take the money or engage in a corrupt transaction were breakdowns of the safeguards, I still believe that the success rate demonstrates that the middlemen knew what public officials were corrupt, that the middlemen responded to the built-in disincentives by producing for the most part public officials who were disposed toward corrupt transactions, and that the Government was fully justified in pursuing and investigating the information provided by the middlemen.

I know that named public officials who never appeared at meetings, as well as those few, including Senator Pressler, who did appear but were uninterested in the proposition were sincerely offended that Judge Webster authorized offers to be made to them if they appeared at meetings with undercover agents.

I also recognize and regret that those innocent few who appeared at a meeting suffered some inconvenience and embarrassment and potential harm to their reputations. But I ask this committee to consider the alternative: if Judge Webster had said that he did not want the matter pursued as to certain Congressmen, then critics, upon learning those facts later, would have claimed that those Congressmen had used their influence to abort an investigation of them. In effect, the allegations would have been covered up, they would not have been pursued, and the reputations of [103] both the Congressmen and the FBI would have been sullied.

I also ask this committee to weigh the harm suffered by those few public officials who did come to those meetings—which harm I do not minimize—against the enormous benefits derived by the public and the Congress by uncovering and prosecuting more than a dozen powerful corrupt public officials.

I urge this committee not to ignore the fact that Abscam resulted in the removal from the Government of a large number of corrupt public officials, including six Congressmen, one Senator, one mayor, three city councilmen, and an inspector of the Immigration and Naturalization Service.

The direct public benefit is that those people who were willing to sell their offices no longer hold those offices. But there is also the intangible benefit that other public officials who may be contemplating such corrupt activities will have to consider the serious consequences of dealing with individuals who may turn out to be Government operatives.

And finally, I suggest that there are public benefits for making the electorate more aware of the dangers of public corruption and also of advising them of the courage of prosecutors and investigators to combat political corruption, regardless of the power or prominence of the individuals involved.

Fifth, I think it is important that this committee bear in mind that in Abscam, there was no use by the Government of [104] the most intrusive law enforcement techniques which are available. There were no wiretaps in which neither party to a conversation knows that his conversation is being monitored. There were no search warrants used to invade anyone's privacy. There were no invasions of anyone's home or office. There was no effort to turn relatives or close confidants against public officials. Virtually all of the evidence came from statements and promises volunteered by public officials to third parties whom they barely knew and whom they trusted to maintain their silence.

Finally, I think it is important to stress the procedural due process that was accorded to every potential defendant, both within the Department of Justice and thereafter within the judicial system. When the FBI concluded its undercover operation in early February 1980, prosecutors from the Criminal Division and the U.S. Attorney's offices in Washington, Philadelphia, and New Jersey took over responsibility for compiling and evaluating all of the evidence which had been collected. I can tell you that the review process in which I participated within the Criminal Division was open-minded, fair, and thorough. There were detailed written memoranda and oral presentations from career prosecutors who totally had served maybe more than 100 years as prosecutors, and these were subjected to meticulous review by three noncareer professionals, including a renowned [105] Harvard law professor of criminal law, and a distinguished former district court judge, Judge Renfrew, who was then the Deputy Attorney General, and in addition we had the counsel and assistance of Judge Webster, who had earlier been a district judge and an appellate court judge.

We reviewed all of the issues which this committee has heard evidence about. We reviewed the absence of tapes of certain conversations, the absence of memoralization of certain comments and other claims about kickbacks and other problems. We weighed them all very carefully and gave careful consideration to them. We found that they did not warrant not going ahead with indictments of those individuals we believed had been proved guilty.

With confidence that the basic concepts of Abscam were fair and legitimate, and with knowledge that the evidence of guilt against the potential defendants was overwhelming, we had to decide what weight, if any, to give to the imperfections and problems which had by this time—this was the summer of 1980—surfaced in the FBI's undercover investigation, which had concluded by February of 1980.

There was no effort then or now to gloss over or condone certain mistakes or lapses in judgment which may have occurred during the covert stage. But the key point, I believe, then as now, is that none of those alleged activities or occurrences violated or infringed anyone's constitutional [106] rights. None of them tended to exculpate or even mitigate the clear evidence of guilt of any of the proposed defendants, and none of them altered in any way the fundamental fairness of the Abscam operation as it applied to any potential defendant.

Senator **Mathias**. Mr. Nathan, I am sorry to have to interrupt you, but there is a rollcall vote in the Senate, so we will be forced to take a 10-minute recess.

[Short recess.]

Senator **Mathias**. The committee will come to order.

Mr. Nathan, I regret that that recess was slightly longer than the 10 minutes you were promised, but you may have the compensation that the Senate voted twice instead of once.

Please proceed.

Mr. **Nathan**. Thank you.

Before the break, I was talking about some of the problem areas which had been uncovered by the time that indictment decisions were about to be made in the summer of 1980, and our view of it was then, and continues to be, that those problem areas warranted attention for the future, but they did not warrant aborting the operation or foregoing going forward with the prosecution.

With respect to looking forward to the future, in the fall of 1980, I recommended to Assistant Attorney General Heymann and the FBI Director Webster that a high-level task force of FBI officials and Criminal Division supervisors be [107] created to make an intensive review of Abscam, Brilab, and some other, similar, extensive undercover investigations. One of my last actions in the Department in late January 1981 was to submit about a 100-page report to the Deputy Attorney General and the Director of the FBI, detailing the task force's recommendations and findings. I have urged that that report be made available to this committee, and I have set forth in my statement certain of the proposed improvements which I believe could be made for the future.

The principles followed by the investigators and prosecutors in Abscam, and certain other extensive undercover operations conducted in the same period, were incorporated, as you know, into a detailed set of guidelines promulgated by outgoing Attorney General Civiletti in January 1981. Those guidelines establish elaborate review procedures designed to minimize any possible unfairness to private citizens.

In my view, the most important of these quidelines are those which require: (1) that the corrupt nature of the proposed transaction be made clear to potential subjects; (2) that there be a reasonable indication that the undercover operation will reveal illegal activities; (3) that the inducements offered are justifiable and appropriate in view of the character of the proposed illegal transactions, and above all, that the proposed operation be based solely on law enforcement considerations.

I expect that this committee may well have additional [108] amendments to suggest to the undercover guidelines. I believe such suggestions would be useful. I know that they would be well-received by the Department. But I urge that the guidelines, as augmented by reasonable suggestions from any source, be continued as guidelines and not enacted inflexibly into law by the Congress.

As set forth in my statement, I do not believe that any change in the law of undercover operations is warranted, and I note that this was also the conclusion of the unanimous Senate Judiciary Committee in considering the revised criminal code before Abscam became a public controversy.

I believe that judicial reviews, as well as a dispassionate review by this committee, of Abscam in its entirety will bear out my conclusion that the operation was on the whole conducted fairly, properly, and extremely effectively. I am also convinced that if, as I expect, the Department's guidelines that are presently in place are adhered to in the future, the public will be the beneficiary of sophisticated undercover operations which are fair to all of our citizens and which are necessary and effective in combatting public corruption and other forms of serious crime.

Thank you, Mr. Chairman.

Senator MATHIAS. Thank you, Mr. Nathan.

I will ask Counsel to begin the questioning.

Mr. NEAL. Mr. Nathan, you said some nice things about me, **[109]** so it is very difficult for me to question you in view of that——

Mr. NATHAN. That was not my only purpose in saying them.

Mr. NEAL [continuing]. But let me ask just one question, and then I will let Mr. Wheeler—you did not say anything nice about Mr. Wheeler, so he can ask some questions. [Laughter.]

You have referred to a high-level task force convened by the Department of Justice to review Abscam, Brilab, and other complicated undercover operations, and to make a report, and you have stated that one of the last things you saw while in the Department was a 100-page report. Can you tell me, sir, where, after weeks, literally weeks, of pleading with the Department of Justice, of being told, "We will let you know the next day or in a day or two," or, "Yes, we will get back to you," why we cannot get a copy of that report? Is there something in there so hideous that the Department of Justice will not let this committee see it?

Mr. NATHAN. I can assure you there is nothing hideous in the report. It is a very responsible report, and I, as I mentioned in my statement, have urged the Department to make a copy available to this committee. I, of course, am no longer with the Department of Justice and cannot comment on any reason for their not having produced it, if that is the case, at this time.

[110] Mr. NEAL. I have been told by an attorney in town in private practice that he has had, at one time, a copy of the report. He urged me not to start this hearing without seeing a copy of that report. We tried for literally, literally weeks before the hearing started, to get a copy of the report. I have called the Department of Justice practically every day, asking for a copy of the report, and we have asked, as recently as this morning about a copy of the report. Every day and every time, we have been told, "Well, it is under consideration," or "We will get back to you." That has been going on now for at least 6 weeks, and I do not understand it at all.

Mr. Chairman, we have done our level best to get a copy of that report, and with your permission, we have gotten reasonable cooperation from the Department of Justice, and we have gotten good cooperation from the FBI in this investigation, but why they will not let this committee have a copy of that report is beyond me.

That is the only thing I have.

Senator MATHIAS. Well, not to interrupt Mr. Nathan and any comment that he wants to make, but if that cooperation breaks down below the level that we can work this out on a bilateral basis, we will simply have to have recourse to other procedures which are available.

Mr. NATHAN. You understand, Mr. Chairman, I am not in the Department of Justice and have not been for a year and a [111] half, so that——

Senator MATHIAS. No, but just on the chance that somebody from the Department of Justice is listening.

Mr. NATHAN. That is fine.

Senator MATHIAS. Just on the chance that somebody from the Department is listening.

Mr. NATHAN. I am confident that someone is listening, but I cannot help you myself.

Mr. NEAL. Thank you, Mr. Nathan.

Senator MATHIAS. Mr. Wheeler?

Mr. WHEELER. Mr. Nathan, that was a very informative opening statement, and of course, your written opening statement is even more informative and lengthier, and due to time considerations, I am afraid we will not be able to explore some of the many suggestions that you have offered the committee, very constructive suggestions in terms of improvements for the future. Along with Mr. Neal and the committee, I hope that we will have the benefit of the written report and that we will be able to use that, at least, in further hearings, and at least in preparing the written report.

Let me begin, Mr. Nathan, by making sure that we understand each other in terms of what we are are trying to accomplish here today with your testimony. You understand that one of the principal functions of this committee is to [112] try to ascertain whether, under the current policies and procedures and those that existed during the Abscam period, the most desirable balance has been struck between effective law enforcement and protection of individual liberties and privacy. That is really what these hearings are, in large part, about; you understand that.

Mr. NATHAN. Well, I agree that completely, and I think it is very important that the committee make that balance. I want to make clear, however, and that is what I tried to emphasize in my statement, that you cannot balance in the abstract; you cannot balance only by looking at imperfections and problems. You have to look at what benefits were obtained during the course of the operation, what corruption was rooted out, what the success of the cases that were brought were, and put that into the balance against the problem areas that you have uncovered and want to look at. And that is what I urge you to consider as you consider this matter.

Mr. WHEELER. We thoroughly agree, and that is one of the reasons we have picked several specific cases including Abscam to try to deal with it not in the abstract. And I would like to, in fact, descend to numbers right at the beginning, because I think that while it is useful to be specific and to refer to numbers, it is also important that we keep in mind what the relevant numbers are. You point out [113] in your opening statement and in your written, prepared statement that of the 19 public officials who appeared at meetings with the undercover operatives who were authorized to offer bribes, 15 either took the proffered money or otherwise agreed to engage in a corrupt transaction—a success rate, as you point out, of 80 percent.

Well, of course, even if I give you your numbers, which I will do for one moment, the question is, is 80 percent good enough, or in fact, can this committee do something, make some suggestions that will make that percentage even higher. But before——

Mr. NATHAN. Well, let me respond to that. I just think that an 80-percent success rate would be a winning percentage in any league. I cannot imagine that you could have any system that would be more successful than an 80-percent rate.

Essentially, what you are saying is that if middlemen tell you that there will be corrupt public officials who will come in, and they can tell you that five will come in, and you know that four will be corrupt in making the offer to them, I do not see how any responsible investigator or prosecutor would not follow up on those leads and find out which of the four or five are corrupt.

Mr. WHEELER. Well, we understand that that is your view, but it may well be that as a policy matter, 80 percent is not in fact good enough to justify the types of harm that result [114] to the 20 percent——

Mr. NATHAN. I want to make it clear that in our legal system, of course, we assess enormous damages if you can prove something by 50.1 percent, by a mere preponderance of the evidence. Something that is at 80 percent is certainly approaching proof beyond a reasonable doubt. And I cannot believe that we can find a system that is going to be more than 80 percent successful in such an operation.

Mr. WHEELER. Well, it is conceivable, for example, even if you end up with fewer convictions and even with fewer prosecutions, Mr. Nathan, that you can improve that percentage. It is just that you would have fewer prosecutions.

Mr. NATHAN. It is not simply prosecutions, Mr. Wheeler, I want to emphasize. It is corrupt public officials, people who are holding public office who are selling that office and who are corrupting the entire political processes we have. And if there is evidence that, let us say, there are four out of five in a legislature in a State or in the national legislature, it is not foregoing prosecutions in avoiding numbers; it is corrupting an entire process and our entire system. I think that that is a benefit you have to consider.

Mr. WHEELER. I think the point is made, Mr. Nathan, and now let me discuss with you the propriety of the number in terms of setting forth what the real success rate is. In fact, of the 19 public officials who appeared only 12 were convicted. [115] And I submit to you, Mr. Nathan, that that really is the appropriate number, because as to the others, one of those individuals died, and in our view—or, at least, let me put it more accurately—in my view, that individual who died was probably the worst case in Abscam. That was one in which it is arguable that that man was, in fact, duped into appearing before the camera. And, of course, I am talking about Commissioner MacDonald. And in addition, there of course, was no conviction of the other individuals. One of those was an admittedly, avowedly innocent person, Senator Pressler.

Mr. NATHAN. No, no, wait——

Mr. WHEELER. So the proper percentage, Mr. Nathan——

Mr. NATHAN. No, no, no, no. You are incorrect, Mr. Wheeler.

Mr. WHEELER. Mr. Nathan, just let me finish.

Mr. NATHAN. No. You have put Senator Pressler into the group of 15, which I did not do.

Mr. WHEELER. No. I am not putting him in the group of 15. That is exactly what I am not doing. I am saying that there were only 12 of 19 as to whom there were convictions.

Mr. NATHAN. Oh, of 19.

Mr. WHEELER. So the proper percentage is, in fact, 63 percent, not 80 percent.

Mr. NATHAN. Well, I do not agree with that, and let me make it clear. First of all, as to the Commissioner, the [116] Commissioner resigned the day after this matter broke, so he was out of public office before he died, obviously. And he was indicted, so he was prosecuted for this matter and, as you know, he died and there was no chance to either prove him guilty or innocent. So I do not view that as a loss.

I do not want to get into the facts of that case that you have described, but the videotape will clearly show in his presence, $100,000 passing to deal with casino matters, and to suggest that that was a meeting that was not a successful meeting is simply inaccurate.

As to one of the others of the 15, he was named as an unindicted co-conspirator found to be a conspirator, because his testimony, his statements made during the course of the conspiracy were admitted, and because of tactical reasons that the prosecution considered in not indicting him and not proceeding is no reason to suggest that that meeting was not successful.

So I do not believe that whittling away at those 15 is a very fair way of proceeding and I do not think it is fair to put it down to 63 percent, which itself is a very substantial figure, but I do not believe that whittling away is a fair way of proceeding.

Mr. WHEELER. All right. My second problem with your opening statement, Mr. Nathan, is that you say—and you have said this before—that Judge Webster, after all, approved [117] these many offerings of bribes, and that if he had said "No" to some of them, the FBI would have been criticized after the fact for selective targeting. That, I submit to you, Mr. Nathan, is a strawman, because in fact, if the reason that "No" was said with respect to certain people such as Senator Pressler, and "No" was said pursuant to firm, clear, unequivocal, proper guidelines such as "Do not invite a person before the camera unless you have a statement by a middleman in which he represents to an agent or on tape that an agent can listen to that this Congressman or this official will accept a bribe," then in fact you cannot criticize the FBI after the fact because they can say, "Look, all we were doing was following a preestablished, unequivocal policy, and all we did was apply it."

So the question is not whether Judge Webster could have been criticized after the fact. The question is, and the question this committee has been addressing, is, are there guidelines, are there rules that could have been enforced then, and if they had been followed would have prevented these kinds of incidents from occurring without bringing the FBI into a position where it could be criticized.

Mr. NATHAN. Mr. Wheeler, may I respond to you? I disagree with you on both counts. First, it is not a strawman or a red herring, because precisely that allegation was raised in the press by a columnist in 1980 with respect to four New [118] Jersey Congressmen and other public officials. The claim was made that the Department of Justice vetoed meetings with those individuals because they were powerful Democrats, or they were supporters of the President. And those allegations, of course, were false, but the claims were made, and the threat of that kind of claim being made, and the risks to the reputations both of the public officials involved and the FBI are very real.

Second, there are no such things as automatic guidelines. Any kind of guideline that you assess, whether it is reasonable suspicion, probable cause, any standard, invokes discretion by the FBI or whoever is the person who is deciding it. And obviously, any kind of discretion like that can be second-guessed in the future, and people will say, "Well, wait a minute. You said you did not have reasonable grounds for this Democratic Senator in a Democratic administration, yet you said you did have reasonable grounds for this Republican Congressman, and we think you made selections, and you made political targeting."

I think it is one of the fundamental features of Abscam, one of the most important principles, that there was not selection by the Government officials, and once a representation was made by a corrupt middleman that a public official, no matter what party, no matter how prominent, was willing to come in, the Government was willing to meet with him, allow [119] him to come in. If he did not show up at all, that would obviously be one safeguard, and if he showed up and did not take the money, that would be another. And that is the integrity of the system, and when you build in discretionary standards, you are in my judgment asking for difficulties and asking for political judgments to be made, or at least, people to second-guess you and claim that political judgments were made.

Mr. **Wheeler**. The point being, though, Mr. Nathan, that this committee has the task of searching for nondiscretionary possible ways of improving the situation, and that is my point.

Mr. **Nathan**. Well, that is right.

Mr. **Wheeler**. For example, in exactly this one situation, in the Pressler situation, if in fact the alleged representations by Silvestri had been able to be heard by a Justice Department attorney instead of going through at least one layer, if not two layers, of other people, this might never have occurred. And if there were a guideline that required something like that, this would not have occurred.

Mr. **Nathan**. Well, that might not have occurred, and many other meetings at which corrupt transactions occurred might also not have occurred, and later there might be claims that through those various levels where political appointees became involved in a selection process and in reviewing the [120] standards, that they were making judgments not on the merits, but for political considerations.

I cannot conceive of an automatic standard other than a standard that says if a corrupt middleman with whom you have had dealings says that a public official is willing to come in that you say he can come in. Once you put in things such as "reasonable standard," "probable cause," you have got to have discretion, and when discretion is exercised, particularly by political appointees, you are going to have serious problems in terms of the perception of the matter later on.

Mr. WHEELER. Of course, you have those kinds of flexible standards in the guidelines as they exist today—reasonableness?

Mr. NATHAN. You have flexible standards with respect to the creation of an undercover operation, but with respect to carrying out particular transactions, I would hope that there would be neutral principles which would govern, which would to the maximum extent eliminate the discretion, so that there would not be that kind of questions raised later.

Mr. WHEELER. Does it surprise you to know that there are in fact no such restrictions; that the only bribery policies or guidelines, if you will, that are followed by the FBI are the discretion of the individual official who is the appropriate person to make a decision at each level? Under your testimony, that is the worst of all possible worlds.

[121] Mr. NATHAN. No; I do not think so. I think the worst of all possible worlds would be selection to say, "This middleman's word we will take, this one we will not. This Congressman we will see, that Congressman we will not," to suggest there could be political selection in the process. That is what I think needs to be eliminated, and that is where I think Abscam was very successful.

Mr. WHEELER. Then, what you are suggesting, Mr. Nathan, is that the approval process as it is referred to for bribes is really a sham; that in fact, if a middleman makes the statement, there is no reason to send it all the way up to Director Webster for approval, because he has to approve it. Otherwise, he will be subject to the criticism that you are so concerned about.

Mr. NATHAN. If the middleman has made that statement unequivocally—I think there are certain factors to look at in terms of who the middleman is, what are your dealings with him before, and what he has said. I agree with that, and that is why I think the review should go up. But I do not think there should be a standard of probable cause.

Let me say, by the way—I can help on this, and I think it would be useful for this committee to know—that when the Senate Judiciary Committee considered the new Criminal Code, it specifically rejected this standard. And I would like to quote a very brief quote from the unanimous opinion of the [122] Senate Judiciary Committee which considered this.

The committee said:

> From time to time, defendants have attempted to argue that prior to approaching an individual and employing a stratagem or opportunity to cause him to commit a crime, the government should have reasonable suspicion or probable cause to believe that he is engaged in criminal activity. This contention has been steadfastly rejected on the ground that merely offering such inducement is a legitimate investigative technique for which no showing of reasonableness is required.

Now, that was the unanimous view of the Senate Judiciary Committee, and that is the law with respect to the case law. Let me say that in Abscam——

Senator MATHIAS. Mr. Nathan, let me just interrupt you to say that I voted against the Criminal Code, and I do not think I did dissent on the record to the report, but I hope that my negative vote on the code carried over to the report.

Mr. **Nathan**. I see. Fine.

Senator **Mathias**. There is no way you could know this——

Mr. **Nathan**. No way; I apologize.

Senator **Mathias** [continuing]. So that is why I am telling you.

Mr. **Nathan**. Fine. Now, what I say is that while that is the opinion of the Judiciary Committee, at least the majority of it——

Senator **Mathias**. The overwhelming majority.

[123] Mr. **Nathan** [continuing]. The overwhelming majority—and while that is the law in the courts, in Abscam and pursuant to the guidelines, the guidelines reflect a discretion to go beyond what the minimum requirements of the law are, and I think that they are appropriate. And further, in Abscam, I think we did have the reasonable suspicion, even though it is not required, because of the existence of the middlemen and the reasons why I think we were justified in finding out if what they were saying was true or not.

Mr. **Wheeler**. But you are aware, Mr. Nathan, that in fact the information about the middleman's background and his past reliability—none of that information ever was forwarded up to the Director for the individual middleman in question, so to the extent that you are trying to say——

Mr. **Nathan**. No; I do not accept that. With respect, for example, to Mayor Errichetti, who clearly was one of the principal middlemen in the beginning, the Director was fully aware of the prior relations, having authorized payments to him and knew the relationship that had existed. So there were at least situations like that where, even though it is not memorialized in the memorandum, clearly the Director was aware of the prior history with respect to some of the middlemen, including Errichetti.

Mr. **Wheeler**. Well, with respect to Mr. Errichetti—in fact, why don't we talk about the middlemen, because that is an [124] issue that has been raised many times, as you can imagine, in the last several days. You, however, have offered in your prepared statement probably the lengthiest and most well considered, I think, defense of that as an alleged safeguard. But let me begin by telling you——

Mr. **Nathan**. I apologize for the length and the verbosity.

Mr. **Wheeler** [continuing]. That when Mr. Revell testified—you know who Mr. Revell is——

Mr. **Nathan**. Yes. I have great respect for Mr. Revell.

Mr. **Wheeler** [continuing]. When Mr. Revell testified last week, in response to questions from Senator McClure, Mr. Revell ended up saying:

> Well, from the time I testified Tuesday through Mr. Mullen's testimony yesterday and today, we have agreed that that is the bottom line, that there are instances in this case and others where individuals come to these situations where we are relying on information that we cannot 100 percent determine is accurate, and in fact, in some instances, we have found was not accurate. So, what we have testified to, what the guidelines called for, and what the Court interpretation calls for, is before that bribe is extended that we ascertain all of the other factors that we have indicated, and there is no question that we understand that and that you understand that, that there are many situations in not only public corruption cases, but in other types of cases, where that is all we have, period, that is all we have to that point; namely, the safeguards at [125] the meeting.

Now——

Mr. **Nathan**. Well, I agree with Mr. Revell's statement. In my view, obviously, you do not have 100 percent certainty. In my view, you have three levels of safeguards when you deal with the middlemen. In the first place, when you are dealing with a corrupt middleman whom you know, you have reason to believe he is not going to approach an innocent person, a person he knows will not be interested in the corrupt opportunity, because if he makes such a statement to a person he either does not know or knows as an honest person, he will be arrested; they will call the authorities. So it is not likely that he is going to approach such an individual. That is the first safeguard.

The second is, he knows that he has got to produce that individual in a meeting, in a face-to-face meeting, and it is very unlikely that he is going to produce someone for that kind of meeting where an explicit corrupt transaction is going to go down, if he has not informed that person, or if he thinks that person will not go along with that transaction, because he obviously would be subjected to not only embarrassment, but the possibility of prosecution and of retribution.

And the final safeguard, even if those two do not succeed, is the ability, as Judge Newman said, of the public official who comes to the meeting to, when he finds out what **[**126**]** this is all about, to turn it down and to say "No." So there are three levels of safeguards. That is the ultimate level, as Mr. Revell has said, but there are two more before that which, in my view, justify why you have such a high success rate of public officials who actually came to meetings with those who actually engaged or agreed to engage in the corrupt transaction.

Mr. **Wheeler**. All right. You recognize, though, Mr. Nathan, that when you say "three safeguards," the last safeguard is a safeguad only against a person actually being prosecuted, not a safeguard against that person's privacy being invaded, that person being subjected to possible entrapment, and that person being brought before the camera with the possibility that it will be leaked and that his reputation will be damaged?

Mr. **Nathan**. Well, I agree that there is potential harm to an individual who comes and gets through the first two safeguards and has this offer made to him. I repeat the statement of the Judiciary Committee, that merely offering such an inducement is a legitimate investigative tool. And I would compare it to matters where you have allegations of past misconduct where investigations can take months or even years to pursue, and you can subject people to all kinds of harassment from investigative matters and there is also the possibility of leaks there. Here, you come to a meeting, and **[**127**]** within half an hour or less, the matter is disposed of completely. Either he has taken it, in which case he will have a prosecution, or he does not, and the matter is over.

Now, the matter of leaks is a deplorable one. It is an outrage in this case, but it is not endemic to undercover operations. It happens any time. As one of the Senators said today, it happens a lot in Washington, and it happens almost any time, or can happen any time, when there are prominent people involved in an investigation of any kind, regardless of whether it is an undercover investigation.

I do not minimize the harm to an individual and the potential damage to his reputation, having come to that last step and having turned it down, and I think there ought to be great steps to try and minimize that, and I think the middleman's steps do that. But I also do not think that that harm is sufficient to override the results of having eliminated from public office a large number of corrupt officeholders.

Mr. WHEELER. Well, let us see how well in fact your theory about how these middlemen are deterred from such conduct really works. And you had a very succinct two sentences on page 19 of your statement, where you said first, the middlemen "had established continuing corrupt relations with these representatives and presumably desired to continue them as long as they proved profitable. If the middlemen repeatedly supplied incorrect information, the relationship, along with the anticipated reward, would be [128] damaged or destroyed."

Let me review quickly with you, Mr. Nathan, the middlemen who were principally involved in the Abscam cases involving congressional defendants. Those middlemen are Errichetti, Criden, Silvestri, Ciuzio, Weisz, Stowe, Sandy Williams, Katz, and Feinberg. As to Ciuzio, Weisz, Stowe, Sandy Williams, Katz, and Feinberg, your first premise does not work because they had not established a continuing corrupt relationship; each of these individuals brought in only one Congressman for a bribe.

Mr. NATHAN. When you say "brought in one Congressman," I reject that notion of a continuing corrupt relationship, that that is the standard for a corrupt relationship. I do not want to go through all the names that you have there, and I do not think it is really quite fair.

Mr. WHEELER. Well, let me finish the other three——

Mr. NATHAN. Well, let me say, the main point is——

Mr. WHEELER. Let me finish the other three——

Mr. NATHAN. Please, Mr. Wheeler——

Mr. WHEELER. I have not interrupted you, Mr. Nathan. Let me finish my question.

Mr. NATHAN. Fine.

Mr. WHEELER. All right. Thank you. Now, as to Mr. Errichetti, Mr. Nathan, Mayor Errichetti in June 1979 represented to the FBI that an individual from the State of [129] New Jersey would accept a bribe of $25,000 in return for selling his office, his influence in a check-cashing scheme. When that individual showed up, it turns out that Mayor Errichetti had to admit that in fact he had lied, and that is in an FBI document. Mayor Errichetti admitted he had not in fact prepared this person in advance. Then Mayor Errichetti, on September 19, 1979, brought before the FBI cameras an individual supposedly named Mario Noto, who of course turned out to be the law partner of Howard Criden, another one of the middlemen, thereby showing that Mayor Errichetti certainly was not deterred from trying to put a scam on the people he was supposedly so interested in keeping his profitable relationship with, in both instances. As to Howard Criden, it was Howard Criden's law partner, Ellis Cook, who appeared before those cameras, ostensibly as Mario

Noto, so Howard Criden was not deterred from trying to scam the FBI officials.

As for Joseph Silvestri—perhaps the worst example of all—let me give you Mr. Silvestri's history. The first request in the FBI files, based on a Silvestri recommendation heard on October 9, 1979, in which it was stated that Silvestri had represented that for $25,000, a certain State official would accept the bribe and would sell his office. In fact, when that meeting occurred, that State official did accept the money, but promptly sent a letter thanking Mr. Silvestri for the legal retainer in connection with the financing of a hotel, [130] and that individual, of course, has not been prosecuted.

The next instance was that on October 17, 1979, request for approval through the FBI of a $50,000 payment based on Mr. Silvestri's representation that a Congressman would accept a bribe in return for selling his office—that meeting did not even occur.

On October 19, Mr. Good advised FBI headquarters that Silvestri would bring in one of three Congressmen, and incidentally, this is on October 19, which is 2 weeks after your memorandum to all the prosecutors in the field, stating New Jersey prosecutors' approval had to be obtained before a bribe was to be offered to a New Jersey official. Nevertheless, that was not done. And in fact, on October 20, 1979, one of those three Congressmen showed, and no bribe was offered to that Congressman.

On November 7, 1979, at 11:25 a.m., Silvestri called to inform that he was not going to be able to produce the Congressman he said he was going to produce and that instead he was going to bring in Senator Pressler. That, of course, we have talked about at great length, and we know that Senator Pressler had not been informed at all. Despite that, in December 1979, on the word of no one other than Silvestri, the FBI began an investigation into one of the most influential, highest ranking Congressmen and was pursuing it right up to very end of the Abscam operation [131] on February 2, 1980. Now, we have a situation, then, where Mayor Errichetti lied in one instance as early as June, tried to scam the operatives in September, where Criden tried to scam the operatives in September, where Silvestri lied to the FBI representatives about having made these representations, and it is your position nevertheless that the middlemen are adequately deterred from making misrepresentations about what the Congressmen will do. I do not understand that.

Mr. NATHAN. Are you finished, Mr. Wheeler.

Mr. WHEELER. Yes.

Mr. NATHAN. First, with all due respect, you know, it is very difficult to deal with a whole host of facts that you throw out in a lengthy speech. If you want to deal with individual ones, we could stop at each one. But now, you have put out four categories and mentioned dates and times and places that are very difficult to resond to in a general way. But let me say this, so you understand my position. It is not that the system is foolproof, and as I have made clear, these middlemen are corrupt individuals, and they are not people that you would give credence to everything that they say. The point is that you would follow up what they say to find out whether or not it is true. In some cases, it is not going to be true; in other cases, it is. And if it is true in four out of five times, as the statistics in Abscam suggest, I would suggest to you that any responsible investigator would be [132] derelict in his duty in not finding out those times.

Now, you point out several instances where what they said did not pan out and was not true. But I would suggest that you would only know that by pursuing the investigation and not by turning a deaf ear to it and refusing to listen to the other matters, which resulted in convictions.

The list of middlemen that you have suggested are those who produced the 22 people who were convicted and the dozen or more public officials who were convicted and eliminated from office. So it would be totally improper, in my judgment, to disregard their statements, and I think you had to follow them up. That is not to say that every statement they make is true, and it is not to say that the safeguard I am suggesting about not being concerned about a scam is foolproof. Obviously, there are exceptions, and there are times that they will try that, and they will try it, and in one case, for example, after being chewed out for that, it did not happen again. So that I think the risk is there, not a foolproof matter, but it is one safeguard in a series of safeguards, and it would be, in my judgment, totally unprofessional for an investigator not to consider it.

Let me explain what I think is kind of a double standard that is being considered here. The Congress has enacted—and this, I think, Senator Mathias did support—has enacted the special prosecutor legislation. That requires that if there is [133] any allegation against a covered executive official, whether it comes from a person you know before, whether it comes from a totally unknow source, and whether it comes from an anonymous source, must be investigated immediately. There must be a preliminary investigation of that person, and if within 90 days you are not able to establish that it is so insubstantial as not to require further investigation, you must appoint a special prosecutor. Those kinds of information that come to you and that require that kind of investigation are much less reliable than the information which you get from middlemen, and yet in that case, Congress has said, "You must launch into an immediate investigation, and if you cannot disprove it—not just that you think there is something there, but if you cannot disprove it—you have got to ask for the appointment of a special prosecutor."

Now, I say that you cannot have that standard on the one hand and then some standard which is much higher for dealing with this middlemen on the other. If the middleman says something, you should explore it, you should consider it. Maybe it is true, maybe it is not true. But you have got to look into it and see if it is true.

Mr. **Wheeler**. Well, let me ask you this Mr. Nathan. I have heard you use the Special Prosecutors Act supposed analogy before, as well, but isn't it the case—well, let me ask you——

[134] Mr. **Nathan**. I should not be penalized that I talked to you before and gave you my views.

Mr. **Wheeler**. Well, let me ask you this, Mr. Nathan. Are you aware of any instance in which, under the Special Prosecutors Act, the FBI or any other law enforcement agency has created circumstances for the commission of a new crime, as opposed to simply investigating the facts of an alleged past crime?

Mr. NATHAN. Well, yes, I am aware of that. I cannot discuss it in public, but I can tell you that during the course of an undercover operation, an allegation occurred that would trigger the Special Prosecutor statute, and the undercover operation continued, particularly to find out further information as part of that preliminary inquiry.

And further I would tell you that if you get an allegation involving a covered public official, that there would be nothing improper—it would be a perfectly appropriate thing, in my judgment—during that preliminary investigation to send the informant in, perhaps wired, to talk about either the past action or, for example, if there were a matter of selling narcotics, to ask him if he will sell you narcotics again as he allegedly did in the past. That would be the same kind of thing as something here, and it would be a way to dispose of the matter and to conclude whether or not there was reason to appoint a Special Prosecutor in the matter. I know nothing [135] which would prohibit that, and I think it would be a perfectly appropriate law enforcement technique under a given set of circumstances.

Mr. WHEELER. But it is not one that has been used?

Mr. NATHAN. I just told you there was a situation——

Mr. WHEELER. Of this one instance.

Mr. NATHAN. There was at least one of an undercover operaton that was ongoing in which the allegation arose.

Mr. NEAL. Mr. Nathan, are we talking about the same thing that we have discussed before, that came up in the course of Abscam?

Mr. NATHAN. No.

Mr. WHEELER. I should tell you, you are privy to information that we have been unable to get, because I checked with the only source that I could check with and was told that there was no such usage on record.

Mr. NATHAN. First of all, there is this one that I can think of offhand, but beyond that, theoretically, there is nothing to bar it, and that is the important thing.

Mr. WHEELER. But your analogy was to the Special Prosecutors Act as it exists, and if it is not in fact used in the same fashion, then we are talking about two different animals.

Mr. NATHAN. No, but it could be used that way. If there is an allegation of a covered official that he is engaged, let us [136] say, in narcotics dealing, and that is the allegation that has been raised, and you want to find out whether it is true or not in the course of a preliminary investigation, I think the best way to find that out—you are not going to be able to find out what had happened before except from that informant, who may not be very reliable—is to put a recording device on that person and say, "Send him back in," and see if he will purchase more narcotics from that covered official, which would be the creation of a new matter. If the public official says, "Look, I never saw you before. I do not know what you are talking about. I do not have any of this stuff", that would be very helpful to dispose of that allegation.

Mr. WHEELER. So you think that again, with respect to the executive branch, that merely on the word of an uncorroborated corrupt person, or for that matter, noncorrupt person, that a member of the executive branch has been selling narcotics, that that is enough to warrant sending someone in to try to buy narcotics from that individual?

Mr. NATHAN. Well, the alternative to doing that is to conduct a full-scale investigation of that person, which could take months, and cause him great embarrassment, cause him great legal expenses, and end up being a totally frivolous matter, as has happened a number of times with the Special Prosecutor. So that is the risk. And the benefit is that if there is no truth to this, in one meeting, you can dispose of [137] the entire matter.

Mr. WHEELER. So your answer is "Yes"?

Mr. NATHAN. The answer is "Yes."

Mr. WHEELER. All right, Mr. Nathan. You did make several suggestions as to changes tht could be made in the future, and you said in your statement that many of these suggestions arise out of the way in which Abscam was conducted. Would you summarize the most important of those suggestions, the ones that you consider to be the most important, and the ones that you think would be the most significant departures from existing policy?

Mr. NATHAN. Well, I think the most important one—I think that most of the problems that I perceive in Abscam relate to the informant and his, what I would say were not fully controlled activities. And in my view, in the future, there could be better controls with respect to an informant in an undercover operation, and most significantly, I think the Department should consider trying to minimize the role of the informant in these activities; once he has created the scenario, or brought in some of the people he has contacts with and to whom he can relate, that the earlier he is eliminated from the process, and the more there are dealings directly between professional FBI agents and the subjects of the investigation, the better off this matter will be.

I think, too, with respect to recording and memorializing, [138] I think improvements could be made in that respect. Let me say that when we made those suggestions before leaving, I made them when I, of course, was on the payroll of the executive branch, and I believe that they serve not only the interests of potential targets or third parties, but primarily, they serve the interests of the prosecutor and the investigators in the prosecution.

John Jacobs sat here this morning and told you that it was very uncomfortable to tell the jury about the failure of those tapes and give the defense counsel, a brilliant defense counsel like Mr. Neal, the openings to make arguments about doubts created; that hurts the Government's case. So it is in the Government's interest, in my judgment, to record as much as can be done, consistent with security precautions and other practicalities and to memorialize matters where tape recordings are not possible. That is in the Government's interest as well as the interest of other parties.

Those are a couple of the things which I think are important to do for the future, and I think the Department is well aware of that.

Mr. WHEELER. I gather from your prepared statement that those recommendations appear in what is referred to as the Luskin report?

Mr. NATHAN. You put me in a little bit of a bind, of course, because Mr. Neal eloquently told me that the Department [139] has not provided the report to you, for whatever reasons they have decided, and you ask me to reveal what is in there. But I think in general——

Mr. NEAL. It has already been done. Mr. Heymann has testified at length about the Luskin report, but we have not been able to convince the Department of Justice that they should turn it over to us.

Mr. NATHAN. Yes, sir, I understand.

Mr. NEAL. We have a Department of Justice representative here now, I know, and I wish he could have heard my previous statement and the chairman's statement, but maybe someday we will get the Luskin report.

Senator MATHIAS. I will be glad to repeat it, if there is any doubt about it.

Mr. NATHAN. I certainly would assist, if there is any assistance I can provide. I have urged that it be produced to you. I think it would be very helpful in the important work that you have to do. And in response to your question, Mr. Wheeler, I think it is fair to conclude that those kinds of matters are in this report.

Mr. WHEELER. Let me make one final comment, Mr. Nathan, and you are certainly free to comment in return. One of the conclusions which you stated orally and that is in your prepared statement is that you—and I will read what you said—"I believe that the guidelines should be enforced internally [140] by the Department as overseen by appropriate committees of the Congress, and should not generally be enforceable by criminal defendants."

Let me just say to you that this is the first experience I have had in representing a congressional committee, and one concern that I have with that statement—and it is a statement, incidentally, that has been made in the past by Judge Webster; it is a statement that has been made in the past by Phil Heymann——

Mr. NATHAN. That is pretty good company.

Mr. WHEELER. You are in good company. My concern with it is that it is all well and good to say that the guidelines should be enforced internally by the Department as overseen by the appropriate committees of the Congress. But the problem is that my experience in representing this committee has shown me that it is very difficult for Congress to oversee the FBI and the Department of Justice. We cannot get documents like the Luskin report, after weeks of asking for them. We had to struggle mightily to get the documents that we did get, and we got them under severe limitations. We find, on interviews with the FBI—and this has come out in these hearings—that the FBI unilaterally, without publishing any amendments or without the Justice Department publishing any amendments, has interpreted and revised the terminology of the guidelines. And again, this happens without copies of [141] these documents being forwarded to Congress. So my concern with saying that they should be enforced internally by the Department as overseen by Congress is that Congress does not really appear to get the full information on an ongoing basis or the information that, in my view, the committee really needs in order to make a proper evaluation. And we, I think, have been accorded, in fairness, more cooperation than seems to be the typical case, in terms of getting documents and access to people for interviews. So that is my problems with the statement that it should be overseen by Congress.

Mr. **Nathan**. Well, first of all, I want to make it clear that my principal focus in the enforcement of the guidelines is internal within the Department of Justice, and that is that if there are flagrant, repeated abuses by any particular agents or units, that they have administrative sanctions imposed by the Director or the Attorney General. And that is where the principal enforcement of these guidelines should be. My suggestion that it would be as overseen by congressional committees would not be on a case-by-case basis or every undercover operation, but a more general oversight when there is—I guarantee you that when the FBI or something comes for funding requirements, looking for future funds for undercover operations, they are reasonably forthcoming with respect to information that may be desired by the Appropriations Committees.

[142] So I think there is an opportunity to get the information, not on a case-by-case basis, but in general, to see if the guidelines are being adhered to and whether any changes are needed. But the principal enforcement should be administrative. It is to be contrasted with defendants raising questions about the guidelines which, in my judgment, would require tremendous amounts of discovery, a lot of irrelevant information that is of no concern to a particular defendant, and arguments that totally nonprejudicial and irrelevant and technical violations of the guidelines somehow preclude a guilty defendant from being prosecuted, and I do not think that that is in the best interest of our judicial system or our criminal justice system.

Mr. **Wheeler**. Thank you, Mr. Chairman.

Senator **Mathias**. Mr. Nathan, I think the committee is greatly in your debt for a very thoughtful statement and a very complete statement, both the written version and the oral version that you have given us today.

Mr. **Nathan**. Thank you very much, Mr. Chairman.

Senator **Mathias**. And I find particularly helpful the specific proposals which you have made on pages 38, 39, and 40 of the written statement, because they really address the task of this committee, which is to oversee the process and to improve it if in fact we find it needs improvement.

Your third suggestion is that better procedures should be [143] established to monitor the informant's conduct for compliance with Department and Bureau policies and to guard against possible self-dealings. I think that is a precaution that is well stated, in the light of what we have heard during the past 2 weeks on the actual way undercover operations occur in the field, which is not always precisely the way they are planned in the Department or in the Bureau.

Mr. **Nathan**. Right.

Senator **Mathias**. You say, "* * * careful monitoring of the informant's whereabouts, review of telephone records and use of pen registers, as well as sanctions for the violation of instructions." Now, what kind of sanctions occur to your mind?

Mr. NATHAN. Well, of course, one is dismissal and refusal to use him as an informant at all; two, is reduction in any compensation which he is receiving; there could well be other sanctions related to limiting the scope of his activities, which may also have the effect of reducing his compensation. Other conditions on his whereabouts, in terms of places where he is allowed to travel or where he is allowed to live if he wants to continue to work as an informant—I think it depends on the circumstances, but I could envision a number of sanctions that could be imposed.

Senator MATHIAS. But what you are suggesting is those commonsense steps that need to be taken to control people whose whole record in life indicates that they tend to be [144] uncontrollable, or hard to control.

Mr. NATHAN. Yes; I would say they are very hard to control. The people who are good at this thing are by nature con artists, and intend to con as many people as they can. Let me say, I want to put the suggestions for the future in the context of the past. I believe that reasonable efforts were made in Abscam and in the other undercover operations that I know of. I think improvements can be made, but I think very substantial efforts were made in Abscam by the agents who operated in the utmost good faith in this matter, to the best of my knowledge.

Senator MATHIAS. In your fourth suggestion, you say that, "A mechanism should be established so that appropriate Department of Justice and FBI personnel can, when necessary, contemporaneously review recordings of significant encounters between subjects and undercover agents." That suggestion implies that there is no such mechanism today.

Mr. NATHAN. Well, I think, again, it could be improved. I think there is no formal mechanism in the dealings with tapes. You see, I think you have to understand that Abscam was one of the earliest operations of such a large magnitude. There were more than 1,000 tapes recorded in the course of Abscam, and I am not aware of any other undercover operation which had so many. The treatment of those tapes and the funneling in of the important ones for contemporaneous [145] review by the Bureau and by the Criminal Division, there was not a very efficient mechanism for that, and I think improvements in that area could be made in the future. Again, this, however, would not apply to every tape and every conversation, but to some critical ones, important ones, dealing with middlemen or with a public official.

Senator MATHIAS. Of course, in the area of recordings, copies, and transmitting a tape from one city to another, we are in the middle of a communications explosion, and those things are now relatively easy and relatively inexpensive to do. Do you have any suggestions for us with respect to equipment that the Department needs?

Mr. NATHAN. No; I really am not the person. I am not a technical person to suggest that. But I do think that copying of these matters is not a very difficult process. I think they can be copied where they are taped, and copies could be furnished to Washington with not very much difficulty.

Senator MATHIAS. Are you aware of physical deficiencies, lack of equipment, that kind of thing, which impedes this process? Is that something that Congress can do something about?

Mr. NATHAN. Sure, absolutely. I am not, but I think that the technical people within the FBI would be the appropriate people to ask that, and I think it is an important question.

Senator MATHIAS. Now, finally, in your fifth recommendation, [146] you say, "Where appropriate in multijurisdictional investigations, both the Department and the Bureau should appoint Washington-based coordinators who will have responsibility for insuring adherence to Government policies, for resolving problems between investigators and prosecutors, and for overseeing the direction and scope of the investigation."

It seems to me that that is enormously important, because what we have seen and heard during the past 2 weeks indicates that there have been moments, at least—perhaps, not whole operations, but moments during an operation—when the total control shifted to the field.

Mr. NATHAN. Well, let me respond to that. In the first place, as I point out, I am talking here about multijurisdictional investigations, which are the rarity. I mean, those are not the normal course of investigations. Most investigations are conducted locally within a district and headed up by the FBI unit within that area and the U.S. attorney or the strike force there, and in those situations, I do no think you have the same situation, and there is no reason to come to central authority.

With respect to the exceptional case, that is, multijurisdictional investigation, there too, it is inevitably the case that the action is in the field, and decisions have to be made on the spot and in the field by the agents and by the attorneys onsite who are advising the agents. And most of [147] that action is going to have to take place in the field, and you are going to have to rely on the intelligence and competence and the adherence to standards by those individuals.

There are, however, from time to time during these matters significant and exceptional events which do require coordination and control, and it raises the serious problem of having someone who has the time and the expertise to look at that question and has the authority to deal with attorneys and agents who are from a variety of jurisdictions, to try and pull that together. So, while I endorse the suggestion—obviously, it is in my statement—I do not want to minimize the difficulty of its being implemented.

Senator MATHIAS. Thank you very much.

Mr. NATHAN. Thank you.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Thank you very much.

Mr. Nathan. you have indicated that you feel like proper guidelines would be satisfactory and preferable to actual statutes relating to undercover operations.

Mr. NATHAN. Yes.

Senator HUDDLESTON. On page 41 of your statement, you mention, I believe, three items that those guidelines should require. The first one, "The corrupt nature of the proposed transaction be made clear to potential subjects," and (2), "There be reasonable indication that the undercover operations will [148] reveal activities," seem to me to be basic fundamental principles as opposed to operational procedures or details, and perhaps might better be in legislation relating to this type operation. Does that make any sense to you?

Mr. NATHAN. Well, first of all, let me say that these are in the guidelines which are presently in effect——

Senator HUDDLESTON. I understand, correct.

Mr. NATHAN [continuing]. And so they have that effect. The concern I have with making them law and having congressional approval of them, and then having, perhaps, enforceability by criminal defendants, I think raises serious problems. I also think that the flexibility to deal with a particular case is needed, and if it is a guideline, which is something which generally protects and sets the direction, but leaves the discretion in, say, the Director of the FBI, a Presidential appointee confirmed by the Senate, in a particular case to disregard the guideline for overall public interest, that that would be appropriate. It could be, obviously, reviewed by the courts in that particular case, but I am concerned about making an inflexible rule enforceable by criminal defendants of guidelines which are, in large part, designed not to protect the indicted defendant, but third parties. In the situation of Senator Pressler, if this was in legislation, I would not want to see one of the Congressmen enforcing the guideline with respect to Senator Pressler and seeking dismissal of his [149] indictment because the Senator Pressler situation occurred, regrettable as that was, for that innocent person.

Senator HUDDLESTON. Well, I can understand that, a natural reluctance to put more in the statute than is necessary, because it does offer that opportunity of defense. This, however, would make it clear that an undercover operation would be undertaken, and in the case of a reasonable and serious nature, it might eliminate any tendency toward any frivolous type of an operation, or one that might not have a useful or reasonable purpose.

Mr. NATHAN. Yes; you know, Senator, in these days of reduced resources, it is very unlikely that any law enforcement agency is going to fritter away those scarce resources with frivolous undercover activities that do not address a significant crime problem and do not have a substantial chance of producing results.

Senator HUDDLESTON. I understand that, but I think history would tell us that in the not too far distant past, there have been certain types of operations that may not have stood the test of this requirement that were used maybe for a personal purpose or were used for political reasons or other reasons.

Mr. NATHAN. Those dangers exist, Senator. I do not minimize them. I would suggest to you, however, that if there were dishonorable people who were running operations like that, they would not be deterred by the fact that it is [150] in the guideline or by the fact that it is in the statute.

Senator HUDDLESTON. They would not be deterred, but they would be subject to maybe greater penalty if they were discovered, as they have been in the past.

Mr. NATHAN. Well, that is another question, right.

Senator **Huddleston**. I think you made a very crucial statement when you said that after all, all the action is in the field in an undercover operation, and essentially, that was true, which seems to me to emphasize the importance not only of good guidelines, but the kind of mechanism that makes sure those guidelines are followed from top to bottom. And you have certain types of operations, such as part of the Abscam, where there was no way that the authorities could know precisely what representation the middleman was making to the other party. You assumed he was making the kind of representation that was appropriate and consistent, but you did not know for sure——

Mr. **Nathan**. Right.

Senator **Huddleston** [continuing]. And there is no way you could have known. And I am not suggesting that I know what the answer is. You cannot be with him all the time, certainly.

Mr. **Nathan**. Well, with respect to the middleman, you cannot be with him at all, essentially. He is not working for the Government. He believes he is dealing with corrupt people. And what he says to third parties, there is no way of **[**151**]** knowing with certainty.

Senator **Huddleston**. So that is just an area that is just almost impossible to deal with with great certainty, even though you may devise the best guidelines possible.

Mr. **Nathan**. That is correct.

Senator **Huddleston**. Do you feel it is important that once the guidelines—and we do have guidelines now established—that in any particular undercover operation that those who are the operators, the FBI agents, and the attorneys, strike force attorneys, the ones that are closest to the field and closest to the actual operation, that they, at least prior to and perhaps during the course of the operation, review those guidelines and make sure that they are both operating on the same wavelength?

Mr. **Nathan**. Yes; I think that that is advisable and salutary. Let me say, though, that I think you have to understand how things actually do operate in the field. There is a tremendous bond and tremendous confidence that builds up over a large period of time between particular agents and particular prosecutors, and that is, in fact, I think, one of the problems that we have here in Abscam and the resulting situation with the New Jersey prosecutors. The particular agents who were running this matter from Hauppauge had dealt with Tom Puccio for over 10 years, on a whole variety of matters, and each of them had great confidence in the other, **[**152**]** and they worked together very well, and they understood the relationship, and they understood the way operations go, and were not terribly interested in having third parties from New Jersey, particularly when there were New Jersey politicians involved in the situation, to be terribly active in the case, and that caused great friction and is one of the difficulties in the matter.

I think that as a practical matter, that close relationship between a given agent and a prosecuting attorney who is advising him on the investigation exists in the real world. Obviously, if they review the guidelines and what is expected of them, that is all to the good, but I think that deep bond exists there, in any event, and they know each other well for a long period of time, usually.

Senator HUDDLESTON. Well, that deep bond, though, can be a two-edged sword.

Mr. NATHAN. Yes.

Senator HUDDLESTON. It can work the other way just as effectively and maybe be an instrument for infringing on some civil liberties and rights, as well as—that bond may be more concerned, I guess what I am saying, with producing a case and getting it into court than it is with following particular guidelines or restrictions and restraints that may be desired to be imposed by higher authority.

Mr. NATHAN. There is always the risk of people cutting [153] corners for whatever purposes, but I do not think that the bond that exists between the agent and the prosecutor deals with that issue or relates very much to that issue.

Senator HUDDLESTON. Just one other point. You quoted some of the judges and stated the record as far as the witnesses and the jurors are concerned. You did not quote Judge Bryant. Did he have anything to say that is worth considering by this committee?

Mr. NATHAN. Well, I did mention the Judge Bryant decision in my prepared statement. I have great respect for Judge Bryant. He is an excellent jurist. In this case, I think that his decision is incorrect, both as a matter of law and on the facts that he is dealing with, and I think that his decision would create a very bad standard—I do not know of any prior case, and he does not really rely on any prior case—which is essentially that once a public official, for whatever reason, indicates a negative to an offer that the matter not be pursued further. And that would, in my judgment, as a matter of public policy, give immunity to public officials; having once said, "No", they could then go out and engage in any transaction. So I do not find that decision very helpful.

Senator HUDDLESTON. Of course, that was only one part of his decision.

Mr. NATHAN. Well, I think that was the principal part of the decision.

[154] Senator HUDDLESTON. Well, he had a lot to say about whether testing virtue or ferreting out where you know a crime has been committed——

Mr. NATHAN. Yes. Well, of course, as I have made clear in my statement, I did not view this a "testing". This was not an honesty test that was submitted. It was pursuing leads from corrupt middlemen who were providing information which there was reasonable basis for pursuing and to find out whether or not it was true. I must say in candor that I believe Judge Bryant's decision is going to be reversed in the court of appeals.

Senator HUDDLESTON. Well, I could not disagree totally just with what you have said. On the other hand, I could not agree totally, probably, that the result of Abscam as it related to Congress was that it rooted out corruption. That implies it rooted out an ongoing corrupt situation. I think we have pointed out here that in the 200-year history of this country, there has been one case relating to immigration fraud within the Congress.

Mr. NATHAN. Yes, but there were in Koreagate allegations of 115 Congressmen receiving payments, of which none were proved because there was no undercover operation. Obviously, that is an exaggerated number that does not bear reality, but there were clearly a substantial number of payments there, and no, or very few cases brought.

[155] Senator HUDDLESTON. There was no evidence ever presented and no question raised that any of these Congressmen who were convicted in this particular incident were engaged in an ongoing operation relating to what Abscam exposed. What I am saying is, how much of it was ongoing and how much of it was a created situation.

Mr. NATHAN. Well, there is no question that it uncovered at least seven legislators who were willing to sell their office. As to what had happended in the past, I think the record is a little murky on that. In some instances, there had been allegations unproved in the past, including in Koreagate. Two of the Congressmen convicted in Abscam had had allegations made about them during Koreagate, and some of the other Congressmen had allegations that had been made. They were unproved, obviously, and were not pursued.

Senator HUDDLESTON. Yes. I was going to say, you are an attorney, and you know that allegations do not mean that there is a crime that has been committed.

Mr. NATHAN. Absolutely, and that is why I think an undercover operation like this is so much more effective.

Senator HUDDLESTON. We do not start throwing people out on the basis of allegations, or we will all be gone.

Thank you very much.

Senator MATHIAS. Mr. Nathan, I have just one brief question which is suggested by your second recommendation, that [156] the participation of the informant should be minimized.

Mr. NATHAN. Yes.

Senator MATHIAS. Now, would that include, in your thinking, a requirement that the corrupt middleman, to use the word of art that has been employed here, must communicate his information directly to an agent rather than to an informant?

Mr. NATHAN. Well, I really hate to make hard and fast rules, and I am not really suggesting that these suggestions should be in the nature of inflexible rules that have to be followed all the time. I am making suggestions that are advisable in the general nature of cases, and I would hate to make a hard and fast rule. I think each case would have to be considered on its own particular merits. As a general proposition, it would be better obviously if those allegations were made to an agent, and it would be better, in my judgment, if the meetings between the public officials were directly with the agents and perhaps not have the informant involved in those conversations at all. But that is the ideal, and it is not necessarily applicable in every case.

Senator MATHIAS. Thank you very much.

Counsel, anything further?

Mr. NEAL. Mr. Chairman, I would like to ask a few questions, but since Mr. Nathan is not known for one line answers, I think we ought to call the next witness.

[157] Senator MATHIAS. Thank you very much, Mr. Nathan.

Mr. NATHAN. Thank you, Mr. Chairman. If I may say—I want to reiterate what I said at the outset—first of all, your counsel have been extraordinary in the professionalism with which they have dealt, and we respect it very much, and I believe this committee is pursuing matters in a very responsible way. If I may say immodestly, and perhaps improperly, I believe that the professionalism and the responsibility of this committee mirrors in a way the way in which the Department of Justice handled the Abscam case and the very delicate investigation that existed.

Senator **MATHIAS**. Thank you very much.

Our final witness for the day is Mr. Robert B. Fiske, former U.S. attorney for the southern district of New York.

Mr. Fiske, have you received a copy of Senate Resolution 350?

Mr. **FISKE**. Yes, I have, Senator.

Senator **MATHIAS**. And have you received copies of the rules governing the operation of this committee?

Mr. **FISKE**. Yes, I have, and I have read them.

Senator **MATHIAS**. Then, you are aware that all testimony must be under oath.

Mr. **FISKE**. I am.

Senator **MATHIAS**. If you will rise and raise your right [158] hand, I will administer the oath. Do you swear that all the testimony you will give to this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **FISKE**. Yes, I do.

Senator **MATHIAS**. I know you have a statement, because I have a copy of it. Will you proceed with your statement at this time?

Mr. **FISKE**. Yes, sir.

STATEMENT OF ROBERT B. FISKE, FORMER U.S. ATTORNEY FOR THE SOUTHERN DISTRICT OF NEW YORK; PRESENTLY, PARTNER WITH LAW FIRM OF DAVIS POLK & WARDWELL, NEW YORK

[The following was received for the record:]

PREPARED STATEMENT OF ROBERT B. FISKE, JR.

My name is Robert B. Fiske, Jr. I am presently a partner in the New York City law firm of Davis Polk & Wardwell. From March 1, 1976 to March 1, 1980, I served as United States Attorney for the Southern District of New York. From August 1, 1957 to March 15, 1961, I had served as an Assistant United States Attorney in that same District; during the last two years of that period I was Chief of the Organized Crime and Racketeering Section. I understand that this Committee has been appointed to look into all aspects of government undercover investigations, and I appear here today, at the request of the Committee, to give the Committee my views on undercover operations in general and to express my views on certain specific issues which I understand are being addressed in those hearings. The specific issues which I have been asked to address include:

(1) What standards should be applied before an individual is approached with a proposal for illegal conduct?

(2) Should a higher standard be applied—specifically should approval of a judge or a magistrate be required—if the conversation is going to be recorded by consensual electronic surveillance or by videotape?

(3) Does the Constitution require that a higher standard be applied when the person to be approached with a proposal of illegal conduct is a member of Congress?

(4) How can the activities of undercover informants who are not agents of the Federal Government be most effectively supervised and monitored?

(5) In the event that attorneys themselves become involved in the direction of the investigation to the extent that they may become witnesses at court hearings, can these same attorneys act as trial counsel in the case?

(6) What if any sanctions should be imposed for violation of internal FBI or Department of Justice guidelines relating to undercover investigations?

(7) Should the present law of entrapment be continued or modified? and

(8) What standards should govern the length, and termination, of undercover operations?

Let me say at the outset that it is a pleasure to be here today before this Committee and to have the opportunity to talk about undercover activities. While I was United States Attorney, our office, working with the FBI, the Drug Enforcement Administration, and other federal agencies, was involved in a large number of what we considered highly successful undercover investigations, which resulted in prosecutions and convictions of major defendants. These included, among many others, the FBI UNIRAC waterfront racketeering investigation which resulted in the conviction of Anthony Scotto and numerous other officers of the International Longshoremen Union; a number of significant investigations of narcotics syndicates, including that led by Leroy "Nicky" Barnes; and the Westchester Premier Theatre investigation, which led to the indictment and conviction of a number of organized crime figures, including Funzi Tieri.

As a result of this experience I am a firm believer in the value of undercover operations, properly conducted and properly supervised. I can state without hesitation that there is simply no substitute for undercover activities in the investigation and prosecution of certain types of crime which have the greatest and the most widespread impact on the public. Indeed, a very high percentage of the cases which the public has come to regard as the most important criminal prosecutions in recent years have resulted from undercover investigations.

These undercover investigations have demonstrated the extraordinarily high evidentiary value of tape recordings, both oral and visual. An undercover investigation that does not utilize either or both of these techniques is ordinarily worth very little. Tape recordings, when properly used, provide invaluable corroboration of the testimony of witnesses who otherwise often would be highly impeachable because of their criminal backgrounds. Tape recordings of the conversations between the undercover informant and the target in some cases may also be of great value to the target himself since they assure a precise and accurate description of what occurred between them, not subject to distortions or outright falsifications by the informant which the target must then explain away or deny.

I recognize that there are risks involved in undercover operations if they are not properly conducted—and indeed, some unavoidable risks even if they are properly conducted. As in so many other situations, what is involved in the last analysis is a balancing of the law-enforcement benefits to be obtained from proper use of undercover operations against the risks of injury to innocent people. That, of course, is the very question which this Committee is addressing.

I hope that my testimony today will be of some assistance to the Committee in determining how the benefits can be maximized, the risks minimized, and the balance between them properly struck.

(1) STANDARDS FOR MAKING A PROPOSAL OF ILLEGAL ACTIVITY

In my experience with undercover operations, I know of no situation where an undercover agent or informant has been allowed to make an approach to a target without a reason to believe that the individual was predisposed towards such illegal conduct. In my experience, the government does not—and should not—pick names at random as targets for an undercover approach. The present FBI guidelines for undercover activities require that there be "a reasonable indication" that the target is engaging, has engaged or is likely to engage in the illegal conduct proposed (except in exceptional cases which require the specific approval of the Director of the FBI). I believe that this is both a proper and an adequate standard for an initial approach to a propsoed target.

In most cases, the information as to the predisposition of the target will come from information in the possession of the federal agency, either directly or through informants with whom the agency has, or had, a working relationship. One question which has arisen is whether an undercover investigation should be allowed to proceed against an individual based solely upon statements by a "middleman" (who is not working with the agency, but is himself a target of the undercover operation) that a particular person is or may be receptive to the illegal conduct proposed. In such a case, the government may be more restricted in its ability to determine the factual basis for the statement than it would be if the information came from one of its own informants. However, it would certainly seem desirable to have the undercover agent explore with the "middleman" in as much detail as is practical, the basis for the "middleman's" belief. In most cases, this would not compromise the investigation; the questions could be put in a way which would indicate that the undercover agents did not want their criminal activity exposed to someone who might be less likely to join the enterprise than to report it to law enforcement. In the end, the judgment whether to proceed would have to be made on a case-by-case basis, but I would be concerned about restricting the ability of the government to go forward unless it was clear that the "middleman" had no reasonable basis for his statement.

(2) THE NEED FOR COURT APPROVAL OF CONSENSUAL RECORDINGS

Concern has been expressed that targets of undercover activities should not be subject to tape recorded or videotaped conversations, absent a showing of probable cause before a judge or a magistrate. Legislation to that effect has been enacted in several states. I respectfully disagree that such a requirement should be imposed.

The United States Supreme Court has held in *United States* v. *White,* 401 U.S. 745 (1971) and *Lopez* v. *United States,* 373 U.S. 427 (1963) that there is no invasion of a defendant's constitutional rights of privacy—and no constitutional requirement of court approval based upon probable cause—in the use of a consensual tape recording, on the basic principle that:

"If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same conversations made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks." 401 U.S. at 752.

No one has seriously suggested that the judiciary should become involved in approving, or disapproving, the countless tactical decisions that must be made everyday in the course of every undercover investigation. Specifically, no one has suggested that prior court approval, based upon probable cause, should be required before an undercover agent has a conversation with a target which is not going to be tape recorded. Recognizing that the conversation between the informant and the target can go forward without a showing of probable cause, there are significant benefits to both the target and the government for having that conversation fully recorded. As noted earlier, if the target rejects the proposal of illegal conduct, it is clearly to his benefit that there be a complete and accurate record of the conversation in which his rejection occurred. This protects him from having to defend himself against any inaccurate testimony by the informant as to what occurred at the meeting. On the other hand, if the target accepts the proposal of illegal conduct, it is clearly in the interests of the government that there be an accurate record of the conversation to corroborate what might otherwise be highly impeachable testimony of the informant.

Obviously some risk of invasion of privacy exists in the creation of a tape recording of a conversation which may involve reference to innocent third parties. That risk—which would exist even in the case of prior court approval based on probable cause—should be dealt with by the development of procedures to prevent such references from becoming public.

(3) SPECIAL RULE FOR MEMBERS OF CONGRESS

If Court approval for tape recorded conversations is not required for targets of other types of criminal investigations—including corruption investigations of other types of public officials—I do not believe that there is any reason why a special rule of Court approval should be required for members of Congress. The Supreme Court has made it clear in *United States* v. *Brewster,* 408 U.S. 501 (1972) and *United States* v. *Helstoski,* 442 U.S. 477 (1979), that the limit of the speech and debate clause of the Constitution (Art. I, § 6) is to prohibit proof at a criminal trial of legislative acts: it clearly does not prohibit the prosecution of members of Congress for receiving, or agreeing to receive bribes. Recognizing that individual members of Congress can be prosecuted, convicted and sent to jail, without violating any constitutional principles protecting the independence of Congress, a sufficient showing has not been made that investigations of individual Congressmen for crimes pose a sufficiently greater threat to the independence of Congress to create a constitutional requirement of special rules for court approval of such investigations.

(4) MONITORING AND SUPERVISING OF THE INFORMANT

Monitoring an undercover investigation is done at two levels: one by the investigating agency and, secondly, by the attorneys in the Department of Justice. The primary responsibility for monitoring the activities of an undercover informant must lie with the agency. This is clearly their field of expertise. Their agents have usually developed the informant; they have the relationship with him and most important they are the ones who are out in the field, acting as often as possible undercover agents themselves as part of the same investigation.

It is imperative that the closest possible supervision be maintained over the informant. (In the undercover investigation of waterfront corruption on the New York docks, which the FBI called UNIRAC, the agents involved met with the undercover informant every morning during the course of the investigation to review with him his proposed activity for the day and to received a report from him on the activities of the day before). In addition, it is desirable that as many conversations as possible between the informant and the targets be tape recorded in their entirety. There are obviously going to be situations in which the conversation cannot be taped recorded—either for reasons of personal security, because of an unexpected meeting which does not allow time to have the tape recorder installed or, in the case of several agencies, budgetary considerations which limit the number of tape recorders that are available for such conversations. In those cases, agents should meet with the informant as soon as possible after the conversation and obtain a full narrative description of what occurred which in turn should be recorded in a written memorandum. The memorandum should include a statement of the reason or reasons why the conversation was not tape recorded.

It is never going to be possible to monitor the activities of undercover informants on a 24-hour a day basis in a way that can absolutely assure that the informant cannot, if he so decides, engage in some activity which is unknown to the agents and which he does not report to them. The best safeguards against that type of activity by the informant are: (a) Whatever relationship of trust and confidence can be developed between the agents and the informant; and (b) the threat, which must be a real one, of meaningful sanctions against the informant if he engages in such conduct. In most cases, the motivation that leads the informant to participate in an undercover investigation is because he himself has been in trouble with the law; in many cases the informant can be required to plead guilty to charges, in a sealed proceeding, with the sentence deferred until after the investigation is over. The informant must know that any conduct which be engages in outside of the instructions which he has received from the agents will be held against him at the time his cooperation is reported to the Court and that any criminal conduct which he enters into while cooperating with the Government will be prosecuted.

While the attorneys from the Department of Justice are ordinarily one step removed from the day-to-day contact between the agents and the informant, they play a vital role in every undercover investigation. They should be consulted in advance to be apprised of the nature of the investigation, the names of the targets and the techniques to be used. They should be consulted in advance with respect to any aspect of the investigation which may possibly raise a legal question. They should be consulted on a continuing basis with a view to reviewing the legal sufficiency and the quality of the evidence that is being developed against each of the targets. They should be kept current on the activities of the informant by having access as soon as possible to transcripts of tape recorded conversations and to memoranda of conversations which were not tape recorded. They are responsible for making the proper agreements with the informants, through his counsel, and for the charges to which the informant must plead guility. The informant must be made to realize that it is the decision of these attorneys (and others in the Department of Justice) as to what is said to the Court at the time of his sentence concerning the manner in which he has conducted himself in the investigation, and that it is these attorneys who will bring additional criminal charges against him if he commits any crimes while cooperating with the Government.

(5) PROSECUTORS WHO MAY BE WITNESSES

In many undercover investigations, legal questions—particularly questions relating to entrapment—occur as the investigation proceeds. In such circumstances, the Department of Justice attorneys who are conducting the investigation will be called upon to give advice to the agents—and sometimes directly to the undercover informants—as to how to conduct themselves in discussions with the targets. The extent of the statements made by the undercover agent or informant may be the direct result of advice received from the attorneys. It is possible that, by cross examinations of the informants, the agents, or otherwise, the fact of the attorney's involvement will become known and the attorney himself may then be called as a witness. The question has been raised as to whether under such circumstances it is appropriate for the attorney to act as trial counsel or whether attorneys other than the attorneys who supervise the investigation should be designated as trial counsel.

The relevant provisions of the Code of Professional Responsibility read as follows:

"DR 5–102 Withdrawal as Counsel When the Lawyer Becomes a Witness.

(A) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm ought to be called as a witness on behalf of his client, he shall withdraw from the conduct of the trial and his firm, if any, shall not continue representation in the trial, except that he may continue the representation and he or a lawyer in his firm may testify in the circumstances enumerated in DR 5–101(B) (1) through (4).

(B) If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness other than on behalf of his client, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client."

These rules do not prevent a lawyer from acting as trial counsel simply because he may be called as a witness by the other side. The Code would not prevent an attorney supervising the investigation from acting as trial counsel unless (1) it was apparent that he would be a witness at the trial of the case (as opposed to a pretrial hearing), and (2) that he would be a witness on behalf of the government. In my experience, this would be an extremely unlikely event. If it should occur, the lawyer should not continue unless the conditions of DR 5–101(B) (1)–(4) were met, the most relevant of which would be the provision allowing continuation as trial counsel if not doing so would work a substantial hardship on the government because of the distinctive value of the lawyer to the particular case.

There are a number of reasons why it is highly desirable from the point of view of the government to have the same lawyer who has supervised the investigation conduct the trial, not the least of which is the intimate knowledge of the facts of the case which he obtains while conducting the investigation. The circumstances under which lawyers supervising the investigation must disqualify themselves as trial counsel should be very limited.

(6) SANCTIONS FOR VIOLATION OF GUIDELINES

Except in extraordinary circumstances, violations of internal Justice Department or agency guidelines should not result in the dismissal of the charges against the defendant. The proper sanction should be internal discipline, as merited by the facts of the individual case. The effectiveness of such action could be monitored by the appropriate Committees of Congress, which might ask the agencies and Department of Justice to report to them periodically on all situations involving violation of guidelines and the action taken.

It is also possible that in certain cases where a violation of the guidelines has caused injury to an innocent person, a civil damage remedy would be appropriate. However, absent a showing that internal sanctions are not sufficient to deter repeated violations of the guidelines, or a particularly egregious situation involving deliberate willful conduct, allowing an indicted defendant to move to dismiss the charges on the basis of alleged violations of internal guidelines would tend to reduce the extent to which such guidelines were promulgated in the first place, and thereby, in the long run, create a greater risk of undesirable conduct on the part of undercover agents. Moreover, to create such a potential remedy would open the door to what could be a flood of pre-trial motions—both post-indictment and pre-indictment, many of which would be totally lacking in merit. This would create an additional burden on an already overburdened judiciary, as well as imposing what could be significant dilatory roadblocks to the prompt administration of justice contemplated by Congress when it enacted the Speedy Trial Act.

(7) LAW OF ENTRAPMENT

Since the United States Supreme Court decision in *Sorrels* v. *United States,* 287 U.S. 435 (1932), the law of entrapment has required the trier of fact to acquit a defendant if it finds that the Government initiated the criminal contact in question, unless it also finds, beyond a reasonable doubt, that the defendant was predisposed to engage in the criminal conduct. That principle has been specifically reaffirmed by the Supreme Court on several occasions since, the last time as recently as 1976. (*Sherman* v. *United States,* 356 U.S. 369 (1958); *United States* v. *Russell,* 411 U.S. 423 (1973); *Hampton* v. *United States,* 425 U.S. 484 (1976)).

It has been suggested that the standard should be changed from the existing so-called "subjective" standard, which focuses on the predisposition of the particular defendant who is being prosecuted, to a so-called "objective" standard, which would focus solely on whether the government conduct "falls below standards, to which common feelings respond, for the proper use of government power." (Justice Brennan, dissenting in *Hampton* v. *United States*, 425 U.S. at 497). This presents to some extent the same issue as whether a violation of agency guidelines should result in a dismissal of the charges—the issue in each case is whether, irrespective of the commission of a crime by the defendant, the charges should be dismissed as a deterrent to improper government conduct.

There are undoubtedly cases—hopefully mainly hypothetical—where the government conduct, in the words of the Supreme Court in *Russell* v. *United States*, is "so outrageous that due process principles would absolutely bar the government from invoking judicial processes to obtain a conviction." The Courts have made clear that in such cases the charges would be dismissed, irrespective of the conduct of the defendant. Short of that type of conduct, the existing law is that "[it] is only when the Government's deception actually implants the criminal design in the mind of the defendant that the defense of entrapment comes into play." (*Hampton* v. *United States*, 425 U.S. at 489). In short, the defendant does not go free if it is established (1) that he in fact committed a crime and (2) that he was in fact predisposed to commit the crime, before the government conduct occurred.

It is my view that there is no necessity for legislation which would change the existing law. I would leave it to the Courts to continue to apply the present standard, allowing juries to convict defendants who have committed crimes which they were predisposed to commit, unless the government conduct falls to the "outrageous" level specified in *United States* v. *Russell*, *supra*—that question to be determined, and that standard to be set, by the Courts on a case-by-case basis.

(8) LENGTH OF INVESTIGATIONS

How long an undercover investigation should continue is obviously a highly discretionary decision. Among the factors ordinarily considered are (i) the extent to which the investigation has produced the results anticipated at the time it was set up; (ii) the potential for further success beyond that initially targeted; (iii) the extent to which the investigation can continue without the risk of exposing the informant or undercover agent; (iv) the importance of bringing charges quickly once sufficent evidence has been developed against a particular target; and (v) the extent to which the continuation of the investigation may cause injury, financial or otherwise to innocent persons.

It would seem difficult, if not impossible, to draw any guidelines which would be applicable to all situations. Those in the Department of Justice and the investigative agencies who are experienced in the conduct of such investigations should be entrusted to balance the appropriate factors and make the proper decision. Included in that balance should be a recognition that if continuation of an investigation, designed to produce criminal charges against important targets causes financial injury to innocent persons, the government may be civilly liable for such damages.

Mr. **Fiske**. I would like to state that I am very pleased to be here before the committee today. My name is Robert B. Fiske, Jr.

Senator **Mathias**. Would you tell me what the "B." stands for?

Mr. **Fiske**. "Bishop."

Senator **Mathias**. I will tell you later why I wanted to know.

Mr. **Fiske**. I am presently a partner in the New York City law firm of Davis Polk & Wardwell, and I would like to take this opportunity at the beginning of my presentation to acknowledge the contribution that has been made to this [159] statement by Karalee Gutman, a summer law student from NYU, who is working in our firm this summer, who is responsible for most of the legal research that is reflected in this statement.

From March 1, 1976, to March 1, 1980, I served as U.S. attorney for the Southern District of New York, as Senator Huddleston indicated, "out in the field, where the action is."

From August 1, 1957, to March 16, 1961, I had served as an assistant U.S. attorney in that same district. During the last 2 years of that period, I was chief of the organized crime and racketeering system.

I understand that this committee has been appointed to look into all aspects of government undercover operations, and I appear today at the request of the committee, as a former prosecutor not involved in Abscam, to give the committee my views on undercover operations in general and to express my views on certain specific issues which I understand are being addressed in this hearing.

The specific issues which I have been asked to address include: (1) What standards should be applied before an individual is approached with a proposal for illegal conduct; (2) should a higher standard be applied—specifically, should approval of a judge or a magistrate be required, if the conversation is going to be recorded by consensual electronic surveillance or by videotape; (3) does the Constitution require [160] that a higher standard be applied when the person to be approached with a proposal of illegal conduct is a Member of Congress; (4) how can the activities of undercover informants who are not agents of the Federal Government be most effectively supervised and monitored; (5) in the event that attorneys themselves become involved in the direction of the investigation to the extent that they may become witnesses at court hearings, can these same attorneys act as trial counsel in the case; (6) what if any sanctions should be imposed for violation of internal FBI or Department of Justice guidelines relating to undercover investigations; (7) should the present law of entrapment be continued or modified; and finally, (8) what standards should govern the length and termination of undercover operations?

Let me say again that it is a pleasure to be here today before this committee and to have the opportunity to talk about undercover activities.

While I was U.S. attorney in the southern district of New York, our office, working with the FBI, the Drug Enforcement Administration, and other Federal agencies, was involved in a large number of what we considered highly successful undercover investigations, which resulted in prosecutions and convictions of major defendants. These included, among many others, the FBI Unirac waterfront racketeering investigation which resulted in the conviction of Anthony Scotto [161] and numerous other officers of the International Longshoremen's Union; a number of significant investigations of narcotics syndicates, including that led by Leroy "Nicky" Barnes; and the Westchester Premier Theatre investigation, which led to the indictment and conviction of a number of organized crime figures, including Funzi Tieri.

As a result of this experience, I am a firm believer in the value of undercover operations properly conducted and properly supervised. I can state with no hesitation that there is simply no substitute for undercover activities in the investigation and prosecution of certain types of crime which have the greatest and the most widespread impact on the public. Indeed, a very high percentage of the cases which the public has come to regard as the most important criminal prosecutions in recent years have resulted from undercover investigations.

These undercover investigations have demonstrated the extraordinarily high evidentiary value of tape recordings, both oral and visual. An undercover investigation, particularly one involving the use of informants who are not Government agents, that does not utilize either or both of these techniques, is ordinarily worth very little. Tape recordings, when properly used, provide invaluable corroboration of the testimony of witnesses who otherwise often would be highly impeachable because of their criminal background. Tape recordings of the conversations between the undercover informant and the target [162] in some cases may be of great value to the target himself, since they assure a precise and accurate description of what occurred between them, not subject to distortions or outright falsifications by the informant, which the target must then come into court to explain away or deny.

I recognize that there are risks involved in undercover operations if they are not properly conducted, and indeed, some unavoidable risks even if they are properly conducted. As in so many other situations, what is involved in the last analysis is a balancing of the law enforcement benefits to be obtained from proper use of undercover operations against the risks of injury to innocent people. That, of course, is the very question which this committee is addressing.

I hope that my testimony today will be of some assistance to the committee in determining how the benefits can be maximized, the risks minimized, and the balance between them properly struck.

First, standards for making a proposal of illegal activity. In my experience with undercover operations, I know of no situation where an undercover agent or informant has been allowed to make an approach to a target without a reason to believe that the individual was predisposed toward such illegal conduct. In my experience, the Government does not, and should not, pick names at random as targets for undercover approaches.

[163] The present FBI guidelines for undercover activities, as I read them, require that there be "a reasonable indication" that a target who is going to be approached with a proposal for illegal conduct is engaging, has engaged, or is likely to engage in the illegal conduct proposed, except in exceptional cases which require the specific approval of the Director of the FBI. While that is not a legal requirement, I believe that this is both a proper and an adequate standard for an initial approach to a proposed target.

In most cases, the information as to the predisposition of the target will come from information in the possession of the Federal Agency, either directly or through informants with whom the Agency has, or had, a working relationship. One question which has arisen is whether an undercover investigation should be allowed to proceed against an individual based solely upon statements by a middleman, who is not working with the Agency, but is himself a target of the undercover operation, that a particular person is or may be receptive to the illegal conduct proposed. In such a case, the Government may be more restricted in its ability to determine the factual basis for that statement than it would be if the information came from one of its own informants. However, it would certainly seem desirable to have the undercover agent or informant explore with the middleman in as much detail as is practical the basis for the middleman's belief. In most cases, this would [164] not compromise the investigation. The questions could be put in a way which would indicate that the undercover agents did not want their criminal activity exposed to someone who might be less likely to join the enterprise than to report it to law enforcement. In the end, the judgment whether to proceed would have to be made on a case-by-case basis, but I would be concerned about restricting the ability of the Government to go forward unless it was clear that the middleman had no reasonable basis for his statement.

Second, the need for court approval of consensual recordings. Concern has been expressed that targets of undercover activities should not be subject to tape recorded or videotaped conversations, absent a showing of probable cause before a judge or a magistrate. Legislation to that effect has been enacted in several States. I respectfully disagree that such a requirement should be imposed.

The U.S. Supreme Court has held, in *United States* v. *White* and *Lopez* v. *United States,* that there is no invasion of a defendant's constitutional rights of privacy, and no constitutional requirement of court approval based upon probable cause, in the use of a consensual tape recording, on the basic principle that:

> If the conduct and revelations of an agent operating without electronic equipment do not invade the defendant's constitutionally justifiable expectations of privacy, neither does a simultaneous recording of the same [165] conversation made by the agent or by others from transmissions received from the agent to whom the defendant is talking and whose trustworthiness the defendant necessarily risks.

No one has seriously suggested that the judiciary should become involved in approving or disapproving the countless tactical decisions that must be made every day in the course of every undercover investigation. Specifically, no one has suggested that prior court approval, based upon probable cause, should be required every time an undercover agent has a conversation with a target which is not going to be tape recorded. So, if you recognize that the conversation between the informant and the target is going to go on and can go on without a showing of probable cause, then the question becomes what are the advantages and disadvantages of having that conversation tape recorded.

In my view, there are significant benefits to both the target and the Government for having that conversation, which is going to go on anyway, fully recorded. As noted earlier, if the target rejects the proposal of illegal conduct, it is clearly to his benefit that there be a complete and accurate record of the conversation in which his rejection occurred. This protects him from having to defend himself against any inaccurate or false testimony by the informant as to what occurred at the meeting. On the other hand, if the target accepts the proposal of illegal conduct, it is clearly in the [166] interest of the Government that there be an accurate record of the conversation to corroborate what might otherwise be highly impeachable testimony of the informant.

Obviously, some risk of invasion of privacy exists in the creation of a tape recording of a conversation which may involve reference to innocent third parties. That risk—which I note would exist in the case of prior court approval based on probable cause, should be dealt with by the development of procedures to prevent or minimize the likelihood of such references becoming public.

Third, special rule for Members of Congress. If court approval for tape recorded conversations is not required for targets of other types of criminal investigations, including corruption investigations of other types of public officials, I do not believe that there is any reason why a special rule of court approval should be required for investigations of Members of Congress. The Supreme Court has made it clear in *United States* v. *Brewster,* and more recently, in *United States* v. *Helstoski,* that the limit of the speech and debate clause of the Constitution, article I, section 6, is to prohibit proof at a criminal trial of legislative acts. It does not prohibit the prosecution of Members of Congress for receiving, or agreeing to receive, bribes. Recognizing that individual Members of Congress can be prosecuted, convicted, and sent to jail without violating any **[167]** constitutional principles protecting the independence of Congress, a sufficient showing has not been made that investigations of individual Congressmen for these crimes pose a sufficiently greater threat to the independence of Congress to create a constitutional requirement of special rules for court approval of such investigations.

Fourth, monitoring and supervising of the informant. Monitoring and undercover investigation is done at two levels, one, by the investigating agency and second by attorneys in the Department of Justice—and by the Department of Justice, I include the U.S. attorney's office and the strike force in the field, primarily; and two, supervisory officials in Washington.

The primary responsibility for monitoring the activities of an undercover informant must lie with the agency. This is clearly their field of expertise. Their agents have usually developed the informant; they have the relationship with him; and most important, they are the ones who are out in the field with the informant, acting as often as possible as undercover agents themselves, as part of the same investigation.

It is imperative that the closest possible supervision be maintained over the informant. In the undercover investigation of waterfront corruption in the Unirac investigation in New York, the agents there met with the undercover informant every single morning during the course of the investigation to review **[168]** with him at the beginning of the day his proposed activity for the day, as well as to receive a report from him on the activities of the day before if indeed they had not received that report on the previous evening.

In addition, it is highly desirable that as many conversations as possible between the informant and the targets be tape recorded in their entirety. As a corollary of that, it is important that the informant have no control over the tape recorder. The agents should control the time when the tape recorder is turned on; the agents should control when the tape recorder is turned off. A key part of the instructions to any informant should be that under no circumstances, barring some type of spectacular emergency, should the informant himself take any action to interrupt the tape recording of a conversation.

Now, there are obviously going to be situations in which the conversation cannot be tape recorded, either for reasons of personal security—which I might say occur frequently in narcotics and organized crime investigations; there are many situations in which it is simply too big a risk for the undercover agent or the informant to wear a tape recorder when dealing with narcotics defendants or organized crime figures—in addition, there may be situations where there is an unexpected meeting called by the target which does not allow time to have a tape recorder installed. Or—and I think this

[169] is relevant to a question asked earlier—in the case of several agencies, there are budgetary considerations which limit the number of tape recorders that are available for such conversations. In 1977, when I was a U.S. attorney in New York, and the Drug Enforcement Administration had a number of undercover investigations going on, they only had seven tape recorders, and it seemed like two or three of them were always in the shop being repaired. And there was a debate in the morning often between the agents conducting the different investigations where meetings had already been set up, as to which of the conversations, on a priority basis, were going to get the tape recorders.

In any event, where conversations are conducted without having been tape recorded, agents should meet with the informant as soon as possible after the conversation and obtain a full narrative description of what occurred, which in turn should be immediately recorded in a written memorandum, and the memorandum itself should include a statement of the reason or reasons why the conversation was not tape recorded.

Now, it is never going to be possible to monitor the activities of undercover informants on a 24-hour-a-day basis in a way that can absolutely assure that the informant cannot, if he so decides, engage in some activity which is unknown to the agents and which he chooses not to report to them.

The best safeguards, in my experience, against that type [170] of extracurricular activity by the informant are: First, whatever relationship of trust and confidence can be developed between the agents and the informant—and that is an extremely important aspect of every undercover investigation—and second, the threat, which must be a real one, of meaningful sanctions against the informant if he engages in that type of conduct.

In most cases, in my experience, the motivation that has led informants to participate in an undercover investigation is because they themselves have been in trouble with the law. In many, if not most, of these cases, the informant can be required to plead guilty to criminal charges, in a sealed proceding, before the undercover investigation activities of the informant start, with the sentence deferred until after the investigation is over.

The informant must realize that any conduct which he engages in outside of the instructions which he has received from the agents and the attorneys will be held against him at the time his cooperation is reported to the court, at the time of sentence. In addition, he must understand that any criminal conduct which he enters into while cooperating with the Government will be prosecuted. In my experience in New York, we did in fact prosecute informants who were working with the Government and who committed crimes while they were engaged in such cooperation.

While the attorneys from the Department of Justice are ordinarily one step removed from the day-to-day contact between [171] the agents and the informant, they play a vital role in every undercover investigation. They should be consulted in advance to be apprised of the nature of the investigation, the names of the targets, and the techniques to be used. They should be consulted in advance with respect to any aspect of the investigation which may possibly raise a legal question. They should be consulted on a continuing basis with a view to reviewing the legal sufficiency and the quality of the evidence that is being developed against each of the targets. They should be kept current on the activities of the informant by having access as soon as possible to transcripts of tape recorded conversations and to memorandums of conversations which were not tape recorded.

They are responsible for making the proper agreements with the informants, through their counsel, and for the charges to which the informant must plead guilty. The informant must be made to realize that it is the decision of these attorneys—and others in the Justice Department—as to what will be said to the court at the time of his sentence concerning the manner in which he has conducted himself in the investigation, and that it is these attorneys who will make the decision as to whether additional criminal charges should be brought against him if he commits any crime while cooperating with the Government.

The next question: Prosecutors who may be witnesses. In many undercover investigations, legal questions—particularly [172] questions relating to entrapment—occur as the investigation proceeds. In such circumstances, the Department of Justice attorneys who are conducting the investigation will be called upon to give advice to the agents, and sometimes directly to the undercover informants, as to how to conduct themselves in discussions with the targets. The extent of the statements made by the undercover agent or informant may be the direct result of advice received from the attorneys. It is possible that the fact of the attorney's involvement will become known, and the attorney himself may then be called as a witness. The question has been raised as to whether, under such circumstances, it is appropriate for the attorney to act as trial counsel, or whether attorneys other than the attorneys who supervise the investigation should be designated as trial counsel.

I have quoted in my statement the relevant provision of the Code of Professional Responsibility. It is my view that those provisions do not prevent a lawyer from acting as trial counsel simply because he may be called as a witness by the defendant. The code does not prevent an attorney supervising the investigation from acting as trial counsel unless (1) it is apparent that he will be a witness at the trial of the case, as opposed to a pretrial hearing, and (2) that he would be a witness on behalf of the Government. In my experience, this would be an extremely unlikely event. If it [173] should occur, the lawyer should not continue unless the conditions of the code are met, the most relevant of which would be the provision allowing continuation as trial counsel if not doing so would work a substantial hardship on the Government because of the distinctive value of the lawyer to the particular case.

There are a number of reasons why it is highly desirable from the point of view of the Government to have the same lawyer who has supervised the investigation conduct the trial, not the least of which is the intimate knowledge of the facts of the case which he or she obtains while conducting the investigation. The circumstances under which lawyers supervising the investigation must disqualify themselves as trial counsel should be very limited.

The next question, one that was discussed earlier this afternoon: Sanctions for violations of guidelines. Except in extraordinary circumstances, violations of internal Justice Department or agency guidelines should not result in the dismissal of the charges against the defendant. The proper sanction should be internal discipline, as merited by the facts of the individual case. The effectiveness of such action could be monitored by the appropriate committees of Congress, which might ask the agencies and Department of Justice, at budget time or otherwise, to report to them on all situations involving violation of guidelines and the action taken.

[174] It is also possible that, in certain cases where a violation of the guidelines has caused injury to an innocent person, a civil damage remedy might be appropriate.

However, absent a showing that internal sanctions are not sufficient to deter repeated violations of the guidelines, or absent a particularly egregious situation involving deliberate willful conduct, allowing an indicted defendant to move to dismiss the charges on the basis of alleged violations of internal guidelines would tend to reduce the extent to which such guidelines were promulgated in the first place and thereby, in the long run, create a greater risk of undesirable conduct on the part of undercover agents, or informants.

Moreover, to create such a potential remedy would open the door to what could be a flood of pretrial motions, both postindictment and preindictment, many if not most of which would be totally lacking in merit. This would create an additional burden on an already overburdened judiciary, as well as imposing what could be significant dilatory roadblocks to the prompt administration of criminal justice contemplated by Congress when it enacted the Speedy Trial Act.

Question No. 7. Law of Entrapment. Since the U.S. Supreme Court decision in *Sorrells* v. *United States,* the law of entrapment has required the trier of fact to acquit a defendant if it finds that the Government initiated the criminal conduct in question, unless it also finds, beyond a reasonable **[175]** doubt, that the defendant was predisposed to engage in the criminal conduct. That principle has been specifically reaffirmed by the Supreme Court on several occasions since, the last time as recently as 1976, in the *Sherman, Russell,* and *Hampton* decisions.

It has been suggested that the standard should be changed from the existing so-called subjective standard, which focuses on the predisposition of the particular defendant who is being prosecuted, to a so-called objective standard, which would focus solely on whether the Government conduct, in words of Justice Brennan in *Hampton* v. *United States,* "falls below standards, to which common feelings respond, for the proper use of Government power." This presents to some extent the same issue as whether a violation of agency guidelines should result in a dismissal of the charges—the issue in each case being whether, irrespective of the commission of a crime by the defendant, the charges should be dismissed as a deterrent to improper Government conduct.

There are undoubtedly cases—hopefully, mainly hypothetical—where the Government conduct, in the words of the Supreme Court in the *Russell* case, is "so outrageous that due process principles would absolutely bar the Government from invoking judicial processes to obtain a conviction." The courts have made clear that in such cases, the charges would be dismissed irrespective of the conduct of the defendant. Such a situation [176] has occurred in the situation of *United States* v. *Twigg*, 588 F. 2d 373, a Third Circuit decision in 1979 in which, having rejected the entrapment defense, the Court of Appeals for the Third Circuit nonetheless reversed a conviction of defendants because they found that the Government conduct in that particular case met the "outrageousness" standard set up in *Russell*. And in the course of that opinion, the Court cited several other cases where Courts in other Circuits have reached the same result.

However, short of that type of "outrageous" conduct, the existing law is that it is only when the Government's deception actually implants the criminal decision in the mind of the defendant that the defense of entrapment comes into play. In short, the defendant does not go free if it is established (1) that he in fact committed a crime, and (2) that he was in fact predisposed to commit the crime before the Government conduct occurred.

It is my opinion that there is no necessity for legislation to change the existing law of entrapment. I would leave it to the courts to continue to apply the present standard, allowing juries to convict defendants who have committed crimes which they were predisposed to commit, while dismissing cases where the government conduct is of the "outrageous" nature specified in *United States* v. *Russell* and interpreted in *United States* v. *Twigg*, that question to be determined and that [177] standard to be set by the courts on a case-by-case basis.

Finally, at the end of this rather lengthy statement, the last question is Length of Investigation. How long an undercover investigation should continue is obviously a highly discretionary decision. Among the factors ordinarily considered are (1) the extent to which the investigation has produced the results anticipated at the time it was set up; (2) the potential for further success beyond that initially targeted; (3) the extent to which the investigation can continue without the risk of exposing the informant or undercover agent; (4) the importance of bringing charges quickly once sufficient evidence has been developed against a particular target, and (5) the extent to which the continuation of the investigation may cause injury, financial or otherwise, to innocent persons.

In my view, it would be difficult if not impossible to draw specific guidelines which would be applicable to all situations. Those in the Department of Justice and the investigative agencies who are experienced in the conduct of such investigations should be entrusted to balance the appropriate factors and make the proper decision. Included in that balance should be a recognition that if continuation of an investigation, designed to produce criminal charges against important targets, causes financial injury to innocent persons, the Government may be civilly liable for such damages.

Senator MATHIAS. Thank you very much, Mr. Fiske.

[178] Before I turn to Mr. Neal for his questions, let me just say that with respect to your third question, Does the constitution require that a higher standard be applied when the person to be approached with a proposal of illegal conduct is a Member of Congress, that this committee, I think, would have no difficulty answering in the negative. Now, there is no implication in Senate

Resolution 350 that we recognize or that we seek any higher standard for Members of Congress. We are interested in undercover operations as they apply to all citizens.

Senator **Huddleston**. How about a lower standard?

Senator **Mathias**. No, nor a lower standard. We think there should be an equal standard, and for that reason, we will be in the weeks ahead, looking at undercover operations other than Abscam, undercover operations that have been targeted on private citizens.

Mr. **Fiske**. The Chairman, I am sure, is aware that people outside this committee have raised that question——

Senator **Mathias**. I am aware of it, and that is why I am sensitive to it and am taking this opportunity to respond to it.

Mr. Neal?

Mr. **Neal**. Mr. Chairman, it is the discussions that I have heard outside this committee that are the basis for my asking Mr. Fiske to simply address this question—and I concur [179] that there has been no indication on this committee that any different standard should be there—but it is some of the things being discussed in view of the separation of powers, and I thought I would ask——

Senator **Mathias**. And I think it is certainly a proper question to be asked, as are all the other questions you have asked, but I wanted the record to reflect exactly what the committee's position is.

Mr. **Neal**. Mr. Fiske, thank you very much for coming. I would like for the chairman and the members of the committee, and I will see that they all know of this, that Mr. Fiske is a man that I have known for some time; I have always had high regard for the way he conducted probably the most difficult Federal district in the country, the Southern District of New York, and I felt that he would be a man, a non-Abscam-involved person—I assume he was not involved in Abscam; I have not seen his name in any of the documents—to come down and talk to us about undercover operations, and I appreciate it very, very much.

Mr. Fiske, you indicated that you would not be in favor of changing the law of entrapment. You know, of course, that there are, what, three members of the Supreme Court who would like to see the law of entrapment changed from the so-called subjective determination of whether there is predisposition to something that would be more objective and would look at [180] simply the degree, quantity, and quality of the Government's conduct in creating opportunities for the commission of a crime. And so you have really respectable authority there, suggesting that the law should be changed, and indeed, in one of these cases—*Russell* or *Hampton,* I cannot remember which—many of these Justices suggested that Congress ought to look into this area, I believe. And the problem with the existing law dealing with entrapment—and let me say that I understand it to be that the defendant must come forward with some evidence to show that he was induced by the Government to commit the crime; once he does that, the Government then must shows predisposition, and if the Government shows predisposition, the inducement is of no concern unless the Government activity reaches the level of so-called outrageous conduct, that would be a violation simply of the due process clause—am I correct on that?

Mr. **Fiske**. Yes, sir.

Mr. **Neal**. The problem with that is that in the modern era, at least, predisposition is basically determined by looking at the case on trial itself. And indeed, in most of these cases in Abscam, the courts allowed the jury to determine predisposition merely by virtue of what happened in this case, and that seems to me in these kind of cases almost the same as saying, "Well, if he took the bribe, he is ipso facto predisposed," in other words, almost not a separate issue. Am I [181] correct about that?

Mr. **Fiske**. Well, as you indicated earlier, Mr. Neal, I was not involved in Abscam, and I am not completely familiar with the details of all of those cases. I have certainly prosecuted a number of cases where entrapment was raised as a defense, where the issue of predisposition was crucial to the determination, and I recognize that there may be a tendency in the case of some juries to conclude that because the defendant committed the particular crime for which he is being charged, that therefore, he must have some predisposition to do it.

Mr. **Neal**. And, leaving Abscam aside, then, because it appears to me that that was the basis of a finding of predisposition in these cases, merely that they took the money, but leaving Abscam aside, the modern tendency is to find predisposition merely from what happened in the case on trial, not from something that occurred prior to that. In other words, he did not come to this particular transaction with a predisposition, at least as far as the evidence is concerned. It can be shown a predisposition merely by what he did in the case on trial. Am I correct on that?

Mr. **Fiske**. That is correct.

Mr. **Neal**. Since it seems to me that that is not really a separate issue from whether he committed the offense or not, wouldn't it make more sense to simply look at the degree and quality of the Government's involvement in the case, and say, [182] since they have to determine this on a case-by-case basis anyway, and say, "Was the Government's involvement so great and of such great quantity and quality that the guy should not be convicted for this?" Then you could look at whether the Government followed its guidelines or not, the degree, as you say, to which it deviated from the guidelines, whether the deviation was willful or not. In other words, you would in effect reverse *Caceres* by changing the law of entrapment. It has appeared to me, at least, that an objective view of entrapment, taking the three Justices' views, would be a much better law than this so-called subjective predisposition thing. But you do not agree with that?

Mr. **Fiske**. Well, the problem I have with that is that you are going to have a lot of situations where the defendant clearly is predisposed to commit the crime. Take narcotics prosecutions, where this comes up all the time. The person can have had two prior convictions for selling narcotics. He can have served time in jail. He comes out of jail, and he goes back into the business again. And in that kind of a situation, although the Government certainly offers him the opportunity because they send one of their undercover agents in or one of their informants in, the informant may go in on a Monday to buy drugs, and there may have been four other people in there the day before, on Sunday, buying drugs, but simply because the Government happens to go in on that particular [183]

Monday, and it happens to be the result of that particular transaction that leads to the prosecution, then you subject the Government to a review, as you indicated a moment ago, that would not exist otherwise, in a situation which may lead to the acquittal of this defendant who, by any reasonable standard, was not lured into a life of crime by the Government. I think that is the problem I have with it.

I would also make the further comment that, as I understand the *Russell* standard as it was construed in the *Twigg* case, the court now has the power to look at the Government conduct on a case-by-case basis, and the court decides whether or not they believe that conduct was outrageous. And in the *Twigg* case, it was a drug situation where the Government actually supplied some of the materials to allow the defendants to manufacture a synthetic drug, and indeed, it was shown that one of the defendants did not even know how to do it until the Government showed him how. Of course, then, under those circumstances, even though he is not entrapped because we find he had a predisposition, we are going to throw this case out. And I think if the court finds that the Government is going into these situations, violating guidelines, taking unfair advantage of people, they have the power now to throw those cases out by a fairly flexible interpretation of what they determine to be outrageous conduct.

Mr. NEAL. Well, whether you accept the subjective or the [184] objective view, then, you would certainly agree that the extent to which the law enforcement agency had guidelines—first, had guidelines, and then adhered to those guidelines—would be a relevant consideration in whether there was outrageous conduct?

Mr. FISKE. Yes.

Mr. NEAL. One other question I had, and let me tell you, I guess, what has bothered a lot of us about Abscam—and I am not asking you to comment on that—let me give you a scenario that has been clear in Abscam. It appears to us that if a corrupt middleman comes in and says, "Congressman X, Senator Y, or Private Citizen Z will take a bribe," the FBI almost in a kneejerk operation says, "Bring him in." Now, the contention has been that, well, if we do not, somebody will consider that we are exercising too much discretion, or we might miss a case, or there is really not much else we can do. Now, it seems to me that if a middleman says that Congressman X will take a bribe, it seems to me it will not blow anybody's cover to have a dialog with him about, "Why do you know that? What makes you say that? Did he do it sometime in the past? When did you discuss this? What did he say to you precisely? We do not want you to bring in somebody innocent, because they might turn us in."

Now, I can tell you and the members of the committee, you do not see anything like that going on in Abscam. It is [185] simply, "So-and-So says he will take a bribe," and they say, "Bring him in."

What about that?

Mr. FISKE. Well, I think I am going to agree with you on this one. First of all, I think if information comes to the agency through a middleman that a Congressman or a Senator will take a bribe, the agency ought to approach that the same way they would if the informant himself told them. And if the informant told them that, they would sit down with the informant and say, "Well, how do you know that? What is the basis for your making that statement? What are the circumstances under which it occurred? Do you know that of personal knowledge, or did somebody else tell you?" You would in effect cross-examine the informant.

If the information comes from a middleman, I think there are two things that are important. No. 1, I think it would be desirable to try to have the middleman repeat that directly to an undercover agent of the agency involved in a tape recorded conversation, so it is not being filtered through the informant; at least it is coming directly from the middleman to the Government agent, and it is being recorded so that everybody else that is involved in the decision can see exactly what the conversation was.

And then, I think, as you indicated, Mr. Neal, it would be very appropriate, in the appropriate circumstances, and very **[186]** credible, in the course of carrying on an undercover deception, to interrogate the middleman much the same way you would the informant, within reason: "How do you know this?" And the reason I think it is credible is because if you think about it for just a moment, the undercover agent that is playing the role of a criminal can certainly say to the middleman, "We do not want to go around offering bribes to anybody who we are not pretty sure is going to be receptive to this, because, if we are not careful, we are just going to get ourselves prosecuted." And particularly if they are talking about an approach to a public official, it makes all the sense in the world to say to the middleman, "Look, we do not want to go around offering bribes to Congressman So-and-So, unless," as I said in my statement, "We are sure that the Congressman is going to join this illegal enterprise, rather than report it to the law enforcement. So, before we just take your word that this fellow will accept our proposal, we want to be sure what the basis is for your statement." And then I think, having had that kind of a dialog, and having fleshed it out with the middleman, then the decision can be made, again, I would emphasize, hopefully, upon the basis of the tape recorded transcript, which a number of responsible people in the Justice Department and the agency can review together, "Do we have enough to proceed against this particular person?"

Mr. NEAL. The other question I have, and then I will **[187]** turn it over to the Senators, is if you were considering approving or concurring in an undercover operation, and the FBI had suggested the use of an informant, and you learned that this informant had been an informant in the past, but was terminated because he was caught conducting a scam on his own while he was cooperating with the FBI, would you use that informant?

Mr. FISKE. It is difficult to answer that question point-blank, "Yes" or "No," and I guess I would be reluctant to give a categorical "No," because I would want to know more about the circumstances of the prior situation, and I would certainly want to know a lot more about what is the potential for this particular investigation. I think you would have to weigh those two in the scales, and if the informant really had great promise for being able to infiltrate some organization to the very top and bring you five of the people that you have targeted as the most prominent narcotics dealers, organized crime figures, or whatever, you might very well go ahead, even though once before, you had been the victim of a scam.

On the other hand, if it was a relatively minor undercover operation he was proposing, you might very well say, "We do not want to have anything to do with this informant; it is not worth it."

But in any event, in either case, based on the prior experience, you would certainly pay as close attention as [188] possible in monitoring that informant, and you would make every effort that you could to get undercover agents in as quickly as possible, phase the informant out as soon as you thought you could, and I would certainly make it doubly clear to the informant that any conduct outside the instructions and any violation of Federal law by the informant would be prosecuted.

Mr. **Neal**. That is all I have, Mr. Chairman.

Senator **Mathias**. Mr. Fiske, as I said earlier, I think all of the questions which you have raised and discussed with great clarity and precision are useful, but the two that interest me most personally are No. 4 and No. 8—No. 4 being, "How can the activities of undercover informants who are not agents of the Federal Government be most effectively supervised and monitored?"

When you were U.S. attorney, did you have any problems in this regard, any particular kinds of difficulties from which we can learn any lessons?

Mr. **Fiske**. Yes. We had a situation in the *Barnes* case, which was a major narcotics investigation of the leading narcotics dealer in New York, if it is fair to describe him in those terms—he now, fortunately, is serving a life sentence. We had an undercover operative working with the Drug Enforcement Administration who was supposed to report every day where he went to the Drug Enforcement Administration, [189] and those were faithfully written down in recorded statements. He reported to the Drug Enforcement Administration, and on one particular December weekend, he went with one of the lesser figures in the Barnes organization on a weekend down in Baltimore, where they met a person that he described as, "Jap" was the nickname, and they had a transaction with "Jap" involving angel dust, and then they came back to New York. We never included that in the indictment, because angel dust was not part of the conspiracy, and we had this particular defendant charged with enough other crimes that we did not even bother with that. We did not even elicit this particular incident in the course of the direct examination of the informant when he testified at the trial, but we had turned his statements to the Drug Enforcement Administration over to the defendant, as required by the rules, and of course, they showed it to this particular defendant, and I guess he told them, "We were not in Baltimore that weekend. The informant and I went to the Poconos with a couple of girls and spent the weekend at a motel in the Poconos."

Unfortunately, all of this developed for the first time in the course of the cross-examination of the informant at the trial, when the defense attorney—who was a fairly experienced and very capable lawyer—took the informant on his own through the episode of that weekend, reading in effect from the report to the Drug Enforcement Administration: "Did you in fact get [190] in your

Chevrolet at 6 o'clock on Friday night and drive down the New Jersey Turnpike to Baltimore?"

"Yes."

"Did you pick up a couple of girls that night and go to such-and-such a place?"

"Yes."

"Did you meet a man named 'Jap' and buy angel dust?"

"Yes."

He had him repeat that whole story on the witness stand, and then, of course, brought out the register card from the motel, which proved that on that particular weekend, the informant was in the Poconos rather than in Baltimore. Now, it certainly was a major setback in the course of the trial. The judge charged the jury that the informant had lied. We told the judge and we told the jury that we would present the entire question of the informant's conduct and his testimony at the trial to a grand jury after the trial was over. We revoked our agreement that we had with the witness, who had received a fee or compensation for what he had done with the Government. That was eliminated because of his conduct. Fortunately, the defendants were convicted notwithstanding this, because this really was a completely collateral matter, and we presented the matter to a grand jury, and the grand jury in its wisdom decided not to indict the informant for perjury. But that is certainly one illustration.

[191] In the *Scotto* case, the cooperating informant, who was working with the FBI while he was working undercover, during the course of the investigation, himself kept certain moneys that he was supposed to use to pay people off as part of the investigation, and we discovered that in the course of the investigation after this informant had pleaded guilty already to two felony counts of fraud. And when we learned this, we prosecuted him in addition for the crime that he committed during the course of the investigation. We added that as a third charge, and he was required to plead guilty to that, as well as the crimes he committed before the investigation started.

So I am certainly aware of the fact that these informants are difficult. And I might say that this conduct on the part of the informant in the *Scotto* case occurred notwithstanding the fact that he was being monitored on a day-to-day basis by two of the best agents in the FBI that I have had the pleasure to work with. And I think it is an illustration that there is a risk in using informants.

Nonetheless, I would be the first to say, I think, that the benefits to be obtained from both of those situations—one, convicting of the worst drug dealer in New York City and sending him to jail for the rest of his life, and in the other, convicting Anthony Scotto, who was the most prominent official in the ILA in New York and certainly, maybe in the [192] country—were certainly well worth whatever risks we ran with those informants.

But if the thrust of your question is, are there potential problems with the use of informants, the answer is there certainly are, and it is very much a proper concern, I would believe, of this committee to be sure that everything possible is done to control them. If I had to think back on that particular investigation with either one of those situations, I am not sure I could tell you now how we could do that investigation again and guarantee that those precise things would not happen. But I think the best way to prevent it is the two methods that I described before. One is the relationship that the agents have with the informant, which is often what induces him to cooperate in the first place; and second, there has to be the threat, and it has to be implemented, that if the informant deviates from his instructions, that is going to cost him, either in what the judge is told at the time of sentence, or if he commits a Federal crime, he should be prosecuted.

Senator **MATHIAS**. Now, on question 8, you say, "What standards should govern the length and termination of undercover operations?" It seems to me that is a particularly difficult question. Even if the operation is well-conceived and well-structured, at what point is it proper to conclude that you are fishing in a dry well, and that you just ought [193] to stop? Every day, millions of people all over the world pray, "Lead us not into temptation"—God-fearing, sober, righteous people, who recognize the fact that even they might get tempted too far, due to human frailty. And at what point is it really tempting people to carry an undercover operation to such a length that it becomes unfair?

Mr. **FISKE**. Well, I guess maybe you could divide that question into two parts. If you are talking about an undercover investigation that continues, but as it continues, continually involves new people, then I think the question simply is, how productive has this investigation turned out to be. And in my experience, there is not much of a problem in terminating one that is a dry hole. You learn that reasonably quickly. If it is not going to go anywhere, usually, you learn that fairly quickly and neither the——

Senator **MATHIAS**. I would agree, but in that case, you have somewhat of an objective standard.

Mr. **FISKE**. Yes.

Senator **MATHIAS**. If you try a dozen targets, and you do not succeed in any one of them, why, you have some indication that you are not in a fruitful situation.

Mr. **FISKE**. The other part of the question, if I understand it correctly, would be with respect to a particular target, who has already been approached unsuccessfully, and if the question is how many times you keep going back to that [194] same person, well, I certainly would agree with you that that is a very fair question and a matter of concern. It is really, I think, hard to sit here and give you a flat answer, "You can only go once," or "you can only go twice." Certainly, whatever the criteria should be for making the first approach, if the first approach is made, and it is rejected, it seems to me that you have to take a very hard look at the situation before you go back a second time, and certainly an even harder look if you were going to go back a third time.

Senator **MATHIAS**. That recalls the story of a 19th century President of the United States who was approached by a representative of an industry which was interested in certain legislation then pending in the Congress about which they would like to have had the President's assistance.

He said, "Mr. President, we know that you have devoted most of your life to public service. We know that all your time and attention is devoted to the public welfare. And the members of our industry do not think you and your wife should have to be concerned about the future, and therefore, we would like to deposit to your account in any bank or banks you may designate, $100,000"—which was a lot of money for those days.

The President very graciously thanked his visitor, escorted him to the door, "Goodbye."

The legislation did not move. The man came back a second [195] time, repeated these sentiments, and said, "Mr. President, my friends and I would like to deposit to your account at any bank or banks you designate, $200,000. It is obvious that the proposal I made to you before really was not adequate to give you the peace of mind we think you deserve."

Again, the President declined politely and showed him to the door.

The legislation still did not move, and the President received a third visitor in this man. He said, "Mr. President, my friends and I have been thinking about your financial problems, the uncertainty and insecurity you will face when you leave the White House, and I am instructed by my friends to offer to place $300,000 to your account in any bank or banks you may designate."

This time, the President blew up. "Get out of here. Never come back. I never want to see you again." A member of his staff afterward asked him, "Why, Mr. President, did you get so mad at that man? He said essentially the same thing on two previous occasions, and it did not upset you."

"Well," he said, "he was getting too damn near my price." [Laughter.]

Mr. FISKE. Well, I think that one of the comments that was made earlier is appropriate, whether or not it is relevant to the anecdote you just told us. It is important that whatever is offered as a bribe in any of these situations [196] be something that is realistic in terms of what is supposed to be produced for the bribe. In other words, I think you have to make the bribe a real-life-type bribe in terms of its amount. And I think it is unfair in an investigation to, for example, as a very slight favor of a public official and in return for that, offer him a $500,000 bribe. You may be getting him to that very point that you were just referring to, Mr. Chairman, unfairly.

So I would agree that that element in the FBI guidelines is a very desirable one.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman. I will be very brief.

Mr. Fiske, the guidelines that we have now were developed, I guess, after your time, and many of them evolved during Abscam itself. What kind of guidelines did you have in those previous undercover operations that you dealt with?

Mr. FISKE. Well, we did not have the FBI guidelines that are in force today. I know this statement has been made by Director Webster that those guidelines when they were drawn were intended to reflect principles that existed previous to the guidelines, and I think that is a fair statement as far as our——

Senator HUDDLESTON. Were those principles down on paper? Were they something that you dealt with——

[197] Mr. FISKE. No.

Senator HUDDLESTON. It was just more or less an understanding between the District office, the Justice Department, and the FBI.

Mr. FISKE. Without maligning or unduly complementing the guidelines, I think essentially, they set forth commonsense principles, and we were essentially following those same commonsense principles before.

Senator HUDDLESTON. Did the impetus for those guidelines at that time come from your level, at the district attorney level, or did it come from the headquarters of the FBI or the Justice Department, the Attorney General's office?

Mr. FISKE. Well, there were guidelines for the use of informants; I should be clear about that. They were promulgated in the closing days of the Ford administration. But the guidelines that you have been talking about here today were promulgated later, and I am really not sure where the initiative for them came from. I think it is a very desirable thing.

Senator HUDDLESTON. Yes. You indicated some difficulty in dealing with specific informants, middlemen. Have you had occasion, or do you know of an incident where an agent of the FBI was disciplined in any way for any kind of misconduct during an undercover operation?

Mr. FISKE. No, I do not, and quite to the contrary, I would say in the undercover investigations that our office [198] and I personally was involved in, in every, single one, I thought the agents conducted themselves in an exemplary fashion.

Senator HUDDLESTON. We were just referring to the danger of getting the price so high for the target that is being investigated. What about the matter of the middleman or the informant having a situation where his financial gain gets to be so high, if he can produce a target or a suspect? Would that also cause a problem?

Mr. FISKE. Well, that is a factor that certainly has to be considered, and indeed, one of the things that we always considered when we were running these undercover investigations, we tried to look ahead to what is going to happen when this case comes to trial. And we always, as a matter of trial strategy in addition to everything else, tried to construct them in such a way that there was no motive involved for the informant to bring in a particular defendant, that there would be no benefit——

Senator HUDDLESTON. No bonuses.

Mr. FISKE. Yes. He would get paid—if he were an informant, he would get paid whether or not the investigation was successful.

Senator HUDDLESTON. There is some suggestion in the case of some of the middlemen, the corrupt middlemen, that they were splitting these bribes, that they could work on the [199] law of averages and come out pretty good. Anybody they could get in, if they got three out of five of them, or even half of them, or one out of four, or whatever—they did much better than that, incidentally, as we know. But the point is that if their chances of profiting were so great that they could just simply be not quite as discriminating as to who they brought in and still benefit, it could present a problem, couldn't it?

Mr. FISKE. Well, that is certainly one of the things you would want to look at.

Senator HUDDLESTON. I do not have any further questions, Mr. Chairman. I think that the suggestions made by Mr. Fiske will be very helpful to us in determining what our recommendations might be.

Senator MATHIAS. I have just one further question, and that relates to a recommendation made by Mr. Nathan, which you may have heard. That was his suggestion that when you have a multiagency undercover operation, that there should be a Washington-based coordinator. Would that pose problems, do you think? As one who has actually conducted these operations, how do you react to that?

Mr. FISKE. Well, when we were running these investigations in the Southern District of New York, we had, I think, a very good relationship with the Department of Justice in Washington, but essentially we felt that they were our investigations, and [200] we ran them that way, and they really allowed us to run them that way, with very little monitoring or supervision. But, as Mr. Nathan made clear, those were essentially one-District investigations, and there was not any need to coordinate them.

I can see, in a situation where you have a multidistrict or a multiagency investigation, where you have a number of different U.S. attorneys' offices or strike forces involved, that you would need someone to coordinate them.

Senator MATHIAS. If I can interrupt you, you are talking about your own situation in which you, as U.S. attorney, were in command, as it were, of the FBI and the New York office, right?

Mr. FISKE. Right.

Senator MATHIAS. So that it was not multiagency; you were the coordinator.

Mr. FISKE. That is right. And as I was saying, we really did not have the situation that Mr. Nathan was talking about earlier. But I was about to say that I can recognize that if you did have a situation where you had a number of different districts involved with different U.S. attorneys, different strike forces, or if you have a number of different Federal agencies involved, then there is a real need, I would agree, to have someone coordinate it so that there is someone who knows what is going on everywhere, who can lend some generalized, centralized control to the whole investigation. I think there [201] is a real risk, if you have everybody out, sort of off operating on their own, in one general investigation, that people are going to start approaching the same target on consecutive days with different informants, and without one knowing what the other one was doing.

Senator MATHIAS. And you think—obviously, if you add another layer to anything, it is going to increase the bureaucratic weight of the thing—but you think the benefit of that coordination would outweigh whatever delays or—assuming it all works well, I mean.

Mr. FISKE. Well, there are two aspects of this. There is no question that the further you remove control from the field, the more risk you run of making the operation more ineffective, because certainly, the closest working relationships are the ones between the agent and the informant and the agent and the particular assistant U.S. attorney who is in charge of that particular investigation. They are certainly closest to it; they have their fingers on the pulse of the investigation, and they are the ones who can respond the most quickly and usually most effectively. And if you build in too many review procedures, you are simply going to slow the thing down and committeeize it to the point where it is going to lose a lot of its effectiveness.

But there undoubtedly would be situations—although I think they are rare—where the need for some generalized [202] coordination is such that it would be good to have one central person, presumably in Washington, reviewing the whole investigation. But that does not mean he has to review every, single thing that goes on. It would mean that he has to be generally aware of who the targets are and what is being done to try to investigate them. But it does not mean he has to approve every, single contact between the informant and a target in 10 different districts, all going on on the same day.

Senator MATHIAS. Thank you very much.

Mr. Neal, do you have anything further?

Mr. NEAL. Mr. Chairman, I just wanted, in response to your anecdote about the President, to remind you, you being a very literate man, of the statement attributed to Oscar Wilde, something to the effect that, "I can withstand anything but temptation."

Senator MATHIAS. Well, I could respond to that. I have a friend who says, "The only way to deal with temptation is to give in immediately." [Laughter.]

Mr. FISKE. I suppose I could end by saying that the second part of it is, "Deliver us from temptation, but protect us from evil."

Senator MATHIAS. Thank you very much, Mr. Fiske, for a very thoughtful statement and I think, very useful suggestions [203] which the committee will value very much.

Mr. FISKE. Thank you.

Senator MATHIAS. There being no further questions, the committee will stand adjourned subject to the call of the Chair.

[Whereupon, at 4:55 p.m., the proceedings were adjourned subject to the call of the Chair.]

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

WEDNESDAY, AUGUST 18, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 2:09 p.m., in room 301, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Huddleston, Rudman, Inouye, DeConcini, and Leahy.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

We are meeting today for two purposes. In open session we will hear a report from counsel on the review of the confidential Abscam files which were obtained from the Federal Bureau of Investigation. Thereafter, the committee will go into executive session to discuss further activities of the committee.

[2] Let me first ask the members if they have any questions or comments. If not, we will recognize chief counsel, Mr. Neal, and the deputy, Mr. Wheeler, for the purpose of having their report.

Mr. NEAL. Mr. Chairman and members of the committee, we have both prior to, during, and following the 6 long days of public sessions reviewed probably 70 volumes of confidential FBI Abscam files plus subfiles and enclosures to those files. We thought it appropriate to report to the committee on some of the salient information in those documents so they can be a part of the record.

We are not attempting at this point to assess the overall desirability of Abscam or undercover operations generally. Nor are we addressing all criticisms of Abscam today, only those we think that go directly to the issues set forth in Senate Resolution 350. Mr. Wheeler has prepared a long, 35-page report. Merciful to everybody, I suppose, including Mr. Wheeler, he does not propose to read the entire report; but I would ask permission for about 30 minutes so that he could go through the highlights of this report. The report has been circulated to every member of the committee and, of course, is available to the public. Mr. Chairman, with your permission, I would turn the matter over to Mr. Wheeler for his report.

Senator MATHIAS. Mr. Wheeler?

Mr. **Wheeler**. Thank you, Mr. Chairman and members of the [3] committee. What I will do in summarizing the report for you is to focus on the first eight enumerated items in Senate Resolution 350 by taking them one at a time.

The first issue that was enumerated is the targeting of individuals, the question being whether there is evidence in the documents of the FBI and the Department of Justice reflecting that specific individuals or groups of individuals were targeted before their names were advanced by the unwitting middlemen.

In the documents we reviewed, we found no indication of targeting of specific individuals in the Abscam operation before their names were mentioned by middlemen. Nor do the documents indicate that investigative leads were not followed or were abandoned for non-law-enforcement purposes. It appears to us that all individuals to whom FBI headquarters approved the offer of a bribe had been first identified to the FBI by middlemen as being officials who would accept bribes. Further, in every instance appearing in the documents, when a middleman mentioned a public official's name and subsequently represented to the FBI's informant or undercover agent that the target would take a bribe on a specific date and at a specific place, the FBI approved the bribe offer, almost always on the condition that the target must offer proper assurances to the FBI undercover agent making the payment.

Because we have concluded that there is no evidence of [4] targeting of an individual before that individual's name was mentioned by a middleman, there is one specific item we think should be mentioned. In July of this year a reporter obtained and disclosed a portion of the contents of a memorandum dated October 5, 1979, written by then-Deputy Assistant Attorney General Irvin B. Nathan and addressed to several attorneys in the Department of Justice having major Abscam responsibilities. The memorandum is three pages long, single spaced, and entitled "Prosecutorial Coordination of 'Abscam' Investigation." As its title suggests, the memorandum discussed the manner in which the attorneys in the four jurisdictions having Abscam responsibilities should coordinate their investigative and prosecutorial functions.

The memorandum's final paragraph notes that the investigation will not "continue for an unduly extended period of time." It was in this context that the memorandum then stated:

> Notwithstanding the existence of identified potential targets as to whom cases have not yet been completed, this phase of the investigation will be terminated, after a balancing of all of the potential considerations—including the right of the electorate to be apprised in a timely fashion of the charges against incumbent officeholders—by the Assistant Attorney General of the Criminal Division and the Director of the FBI, in close consultation with all of the affected prosecutors, at such time as the Assistant Attorney General and the Director [5] deem appropriate.

The reporter cited the parenthetical portion of this statement, which says "including the right of the electorate to be apprised in a timely fashion of the charges against incumbent officeholders," and concluded that that portion evinced improper political targeting. We find that conclusion unsupported by the memorandum itself, when it is read and considered in its entirety, by the other documents we have reviewed, by our interviews and examination of Mr. Nathan, and by the other circumstances.

It should first be noted that the memorandum was written only 10 months before most of the 1980 congressional primary elections. The Department of Justice, in our view, had only two choices: either the Department could attempt to finish the covert investigation, seek indictments, and conduct trials before the summer primaries of 1980 so that the electorate would know in time to cast informed votes whether the incumbents were criminals; or, on the other hand, it could delay disclosure until after the primaries or after the general elections so as to avoid the risk of prejudicing the reelection campaigns of Congressmen who might be prosecuted but found innocent. The former course of action would subject the Department to criticism such as that that was voiced by the reporter, but the latter course of action would subject the Department to criticism for hiding information in order to help [6] reelect the incumbents. Faced with this choice, it is our view that Mr. Nathan opted to attempt to obtain a final resolution of all issues before the 1980 elections.

In addition, the memorandum states that the decision of when to terminate will be made not by the author, Mr. Nathan, but by Mr. Heymann and Mr. Webster in consultation with all affected prosecutors, of which there were nearly a dozen in different jurisdictions. It seems quite unlikely to us that Mr. Nathan would have memorialized and widely disseminated, as he did, a political targeting conspiracy of such breadth, or even that several career prosecutors from several different States; a Harvard law professor, Mr. Heymann; a former Federal judge and the director of an independent law enforcement agency, Mr. Webster; and all of the addressees of the memorandum would have openly conspired to select political targets for improper reasons.

In sum, it is our view that, although the documents show that Abscam can and should be criticized in several respects, which I will now turn to, improper political targeting of members of a particular party or of a faction of a party is not one of those respects.

The next enumerated item——

Senator Inouye. Mr. Chairman?

Senator Mathias. Senator Inouye?

Senator Inouye. I would like to make an inquiry. Are you [7] following the memo of August 17 or August 18?

Mr. Wheeler. The memorandum of August 18 really.

Senator Inouye. Are there major differences between the two?

Mr. Wheeler. There are no major differences between the two.

Senator Inouye. We just got the 18th today.

Mr. Wheeler. Yes.

Senator Inouye. Thank you.

Mr. Wheeler. The next enumerated subject for inquiry by the committee in Senate Resolution 350 is the origin and initiation of law enforcement undercover activities, in this case Abscam.

The documents show that Abscam began as an undercover operation sometime in late 1977 or early 1978 without the special approval of FBI headquarters. During that period the special agent in charge of each of the 59 FBI field offices had authority to initiate an undercover operation that would cost the FBI less than $1,000, exclusive of salaries, and would last for less than 6 months. Abscam appears to have originated as one of these approved operations approved by the special agent in charge. But there is essentially no documentation prepared during the first several months of the Abscam operation or reflecting what occurred during that period. It does appear from the documents that Melvin Weinberg, the principal [8] informant, worked as an informant as early as October, 1977 on matters that eventually led to the creation of the Abdul Enterprises scenario but that the Abdul Enterprises scenario itself was not employed until February 2, 1978.

On May 25, 1978, the Assistant Director in charge of the FBI's New York offices submitted a written request for FBI headquarters' approval of Abscam as an undercover operation with authorization for expenditures of $30,000 over a 6-month period to investigate illegal securities and organized crime activities.

FBI headquarters approved this application on June 27, 1978.

The next topic is continuation, modification, and termination of Abscam.

The documents show that the covert stage of the Abscam operation continued until February 2, 1980. During that period two changes in the criminal activity under investigation occurred. The first change shifted the focus of the investigation from property crimes to political corruption, principally among New Jersey State and local officials. The second change expanded the focus to include an investigation of congressional corruption using a new scenario known as the asylum scenario.

The FBI files are ambiguous as to when and how the shift to a political corruption investigation began. FBI witnesses have stated that the shift occurred on November 16, 1978, when [9] middleman William Rosenberg told Weinberg that Mayor Angelo Errichetti, of Camden, N.J., was corrupt and would engage in corrupt transactions with Abdul Enterprises. On the other hand, there is evidence that the shift occurred earlier and did not arise from any statement by William Rosenberg.

On October 2, 1980, at the Abscam trial of Representative John Jenrette, an FBI agent named Gunnar Askeland testified that in May of 1978 a cooperating citizen named Joseph Meltzer provided information about a local politician in West Palm Beach, Fla., and that, as a result, Askeland opened an undercover operation in August of 1978 to investigate that politician and organized crime people.

During that same period, Agent Askeland also worked as an undercover agent in Abscam in Florida. In that role, he was Melvin Weinberg's contact agent in Florida.

The documents suggest that Abscam was used as early as July 1978, at least in a peripheral way probably in connection with the operation begun with Joseph Meltzer to assist an investigation of corrupt politicians in Florida and that by late October 1978, Weinberg had been instructed that Abscam's central focus had turned to political corruption.

The origin of the asylum scenario is as unclear as is the origin of the turn to political corruption. No documents sent to FBI headquarters before bribes were offered to Congressmen describe the manner in which the asylum scenario was [10] created, identified who created it, or explained how it was developed and implemented. A document dated July 30, 1979, describes discussions that occurred on the FBI's Abscam yacht, called *The Left Hand*, on July 26, 1979, including Agent Anthony Amoroso's mention of the sheiks' concern about having to flee to the United States and Mayor Errichetti's statement that he had political connections who could help in that regard. But that document does not appear to have been sent to FBI headquarters. Moreover, it does not state whether or not Amoroso had discussed this scenario with his superior, John Good, or with the informant, Mel Weinberg, or with any other person before July 26, 1979. In short, it does not state, expressly or implicitly, that the asylum scenario spontaneously arose on July 26, 1979.

The FBI documents contain substantial evidence that the asylum scenario was developed earlier. On July 14, 1979, in a conversation with one of the middlemen, named George Katz, Weinberg raised and discussed the possibility that the sheiks might have to flee their country. He also described the sheiks' concern that they might have difficulty getting into the United States. Katz replied by stating that the sheiks would need many friends in Congress. Weinberg told Katz that the sheiks were in fact looking for every political friend they could get and that they already had an appointment with a Congressman on August 6, 1979.

[11] The basis for the termination of the Abscam operation is much clearer in the documents than are the bases for the shifts in focus. The request to terminate, that was approved on January 10, 1980, states three principal grounds for the request to terminate: one, Agent Amoroso had concluded that the operation had become too complex to continue; two, there had been several media inquiries, which suggested that security had become more difficult to maintain; and, finally, knowledge of the operation had become widespread in the law enforcement community, which created the risk of further leaks. The New York agents and prosecutors had asked that the operation terminate on an earlier date, but FBI headquarters and the Department of Justice had decided to keep it open until the end of January to enable the Philadelphia and New Jersey Abscam personnel to pursue their remaining leads.

The next category is techniques employed in the Abscam operation.

The primary techniques that the documents show to have been employed were consensual electronic monitoring of many telephone conversations and of meetings by the informant and videotaping of meetings at which the FBI undercover agents were prepared to offer, or actually did offer, bribes to public officials. The documents do not reveal that any wiretape or any pen register was conducted, requested, or considered. The documents show that background checks of FBI files were **[12]** requested and conducted on Representatives Jenrette and Kelly and on Mayor Errichetti before those individuals were offered bribes, but no similar documentations exist for the other public official defendants. The documents also reflect no attempt by the FBI or other Department of Justice personnel to obtain extrinsic evidence of the reliability of the representations of any of the middlemen.

The next topic is FBI management, supervision, and direction of Abscam.

The documents reflect the day-to-day management, supervision, and direction was left to the agents in the field. As previously stated, periodic review of the broad contours of the operation, and decisions concerning funding, termination date, and bribe offers to specific people occurred at FBI headquarters. Every meeting at which a bribe was to be offered was approved in advance by several high-ranking FBI officials.

The documents that were submitted to the decisionmaking officials at FBI Headquarters in Washington contained only sparse information; and, occasionally, the information provided to FBI headquarters was incomplete and even misleading. One example is that, when the Miami field office reported on February 9, 1979, that Weinberg had recovered $300 million in fraudulent certificates of deposit from William Rosenberg, the report stated that the recovery took fraudulent securities out of circulation and thereby prevented large losses to [13] U.S. banks. Similarly, on May 21, 1979, the Miami field office requested a $15,000 payment for Weinberg, again relying on Weinberg's recovery of fraudulent securities, including the Rosenberg securities. In fact, other contemporaneous FBI documents show that Rosenberg had the securities produced at Weinberg's request and that Weinberg even had to explain to Rosenberg how to have those securities produced. So, the securities would not, in fact, have existed had the Abscam informant not caused them to be produced, and no bank was ever in danger of being defrauded. There is even some evidence in the documents suggesting that Weinberg provided the blank securities to Rosenberg to have him fill them out.

The FBI documents also show that in the latter half of 1979 and in early 1980, as Abscam became more complex and involved more personnel and investigative leads, there were several meetings attended by FBI field operatives and representatives from FBI Headquarters. In late September of 1979 Abscam was designated, was called a "Bureau Special" operation. This seems to mean that FBI Headquarters thereafter more closely supervised the operation; in particular, the case supervisor at FBI Headquarters was relieved of his responsibility for the other cases he had been managing, and FBI Headquarters began to maintain its own duplicate originals of tapes. The documents do not reflect what precipitated this redesignation, and it is our view that the circumstances that [14] warranted close headquarters supervision existed long before September 1979.

The next topic is management, direction, supervision, and control of undercover agents, employees, and informants in Abscam.

The documents in the FBI files do not expressly describe the measures that were taken or prescribed to manage, direct, supervise, or control either the agents or the informant; but they do reflect that Weinberg's activities were monitored in several ways. FBI undercover agents attended many of the meetings between Weinberg and middlemen. Undercover agents attended and directed each of the meetings at which a bribe had been authorized to be offered to a public official. Prosecuting attorneys and FBI agents had numberous meetings with Weinberg. And, of course, approximately 1,000 conversations in which Weinberg participated were at least partially recorded and transcribed.

But the files do contain substantial evidence that Melvin Weinberg managed to deceive the agents and prosecutors and improperly to obtain Federal funds. The most serious instances reflected in the documents are as follows:

First, on January 29, 1979, FBI Agent Margot Denedy's picture appeared on the front page of Newsday and the Philadelphia Inquirer as an agent who had participated in the arrest of a hijacker at JFK Airport. Before that date, Denedy [15] had been one of the Abscam undercover agents.

On February 5, 1979, Weinberg called Agent McCarthy and told him that on January 31, 1979, 2 days after these pictures appeared, he had received telephone calls from middlemen William Eden, Angelo Errichetti, and William Rosenberg, in which each of those men had claimed he had seen the Denedy picture. Weinberg further told McCarthy that he had convinced each of the middlemen that the person in the picture could not possibly have been Margot Denedy. Agent McCarthy noted that Weinberg's willingness to continue the operation placed Weinberg in great physical danger, because a middleman or other subject might learn that he was working for the FBI.

On February 16, 1979, the FBI's Brooklyn-Queens office requested a lump-sum payment for Weinberg. The request summarizes Weinberg's recent accomplishments with respect to Rosenberg and Errichetti, and it includes a description of the Denedy incident and shows that Weinberg's role in that incident was an important reason for the bonus request. FBI Headquarters approved payment to Weinberg on the specific basis that Weinberg's ingenuity had saved the operation.

On December 17, 1980, and on February 16, 1981, however, Weinberg admitted under oath that Errichetti had never even seen the Denedy photograph and had not discussed it with Weinberg. So, Weinberg obtained a bonus on the basis of misrepresentations he made to an FBI agent. Other documents in [16] the files show that William Rosenberg denies that he ever called Weinberg to tell him that he had seen the Denedy photograph as well.

On January 20, 1979—and I am now moving to the second item—Agent McCarthy paid Mayor Errichetti a $25,000 bribe. There is no contemporaneous document showing that the FBI knew or believed that Weinberg met with Errichetti on either January 19, the day before the bribe, or January 20, the day of the bribe. In June 1980, though, Errichetti's nephew, Joseph DiLorenzo, told prosecutors that Weinberg had met with Errichetti at a Holiday Inn on Long Island both on January 19 and on January 20, the second meeting occurring after the payoff had been made to Errichetti, and that at the January 20 meeting Weinberg had been given an envelope. Shortly after the DiLorenzo interview Weinberg was asked about the meeting, and he denied having ever been at the Holiday Inn on the 19th or the 20th. Later in 1980, prosecutors obtained records of Weinberg's telephone charge card, which showed that he had made a call on January 19 from that Holiday Inn. These events suggest that Weinberg may have shared in the Errichetti bribe payment and that, at the very least, he had attempted to conceal from the FBI meetings that he had had with subjects of the investigation.

The third incident is there is substantial evidence suggesting that on April 1, 1979, the day after a bribe payment [17] of $100,000 in a briefcase was handed to Mayor Errichetti in the presence of New Jersey Casino Control Commission Vice Chairman Kenneth MacDonald, Errichetti met with Weinberg in Long Island and gave Weinberg a briefcase containing a portion of that bribe payment. The principal evidence, much of which has already been discussed in this committee's recent hearings, consists of the following:

First, Joseph DiLorenzo's statements to Government agents and prosecutors that he drove Errichetti to that meeting and that Errichetti gave a briefcase to Weinberg;

Second, the audio tape created by Weinberg in which he recites a preamble stating that, at the time he was placing the recorded call, it was 2:30 p.m. on April 1, 1979, and that he was calling Mayor Errichetti. Out of approximately 1,000 tapes created by Mel Weinberg, this is the only one of which we know with a preamble by Weinberg stating the time and the date. In addition, both the transcript of this tape and the tape itself lead the reader or listener to believe that the preamble and the conversation that follows it were separated by a period of mere seconds; but that was not, in fact, the case. Instead, the telephone toll records for Weinberg's telephone show that the conversation actually occurred several hours later, and an FBI laboratory analysis of the tape shows that the recording machine was stopped after the preamble and was restarted before the conversation. Moreover, before the toll [18] records had been produced and before the laboratory analysis had been conducted, Washington, D.C., prosecutors were told that the tape proved that Errichetti could not have met Weinberg in Long Island at the time claimed by DiLorenzo, because Errichetti could not have returned from Long Island to Camden in time to talk to Weinberg at 2:30 p.m.

In addition, in a document that we just saw for the first time yesterday, on April 2, 1979, the Brooklyn-Queens office of the FBI told FBI Headquarters that Weinberg had in fact called Errichetti at 2:30 p.m. in a recorded conversation. So that at the time the telephone call occurred, it is clear that the Brooklyn-Queens office was misled into believing that the call was placed at 2:30 rather than at 5 o'clock.

In addition, again from documents that we only recently saw subsequent to the preparation of this written report, it should be noted that Errichetti told Weinberg that Commissioner MacDonald had taken the full $100,000, that he had then given $25,000 of that back to Errichetti for use in repairing the Left Hand boat in Florida but that MacDonald kept the other $75,000. The reason that is a very curious circumstance is that in every other one of the bribe payments with which Mayor Errichetti was involved he received a cut of the bribe payment, at least $5,000 and in some instances as much as $20,000. So, this would be the only instance in which he did not receive a cut.

[19] In addition, when this whole meeting was set up, Errichetti had represented to the FBI undercover agent that he, Errichetti, was going to keep 10 percent of the $100,000 payment. And,

yet, when he calls or talks to Weinberg allegedly on April 1, he claims that MacDonald kept the full $75,000.

The last item worthy of note is that there is substantial evidence that Weinberg solicited and received several gifts from middlemen during the operation without telling the FBI, and that his testimony denying receipt of those gifts in the prosecutions was false. Specifically, there is evidence that Weinberg received three Piaget wristwatches, a briefcase, a wallet, a Betamax video recorder, and $2,000 worth of liquor, all from George Katz; that he received cash and an antiradar device from Carpentier; that he received cash from William Rosenberg; cash from William Eden; and a microwave oven, dishes, a video recorder, a Harman-Kardon stereo receiver, a pair of stereo speakers, and three television sets, all from Angelo Errichetti. The documents show that Weinberg reported his having received the three watches from Katz, but the documents do not suggest that he reported any of the other items. During the subsequent court proceedings, Weinberg admitted that he had received the briefcase, wallet, and antiradar device. He admitted that he had received a bottle or two of liquor. He stated that some of the cash transfers [20] had occurred but described them as loans. And he denied having recieved the other items. The evidence as to most of those other items consists of statements made by the donors in Government interviews or in court proceedings. But also a thorough FBI investigation of the alleged Errichetti gifts provides substantial corroboration for the allegations, and items of the same brands and models as those alleged to have been given to Weinberg were found in Weinberg's home in Florida.

The documents strongly suggest that additional practicable measures could have been taken to monitor and control Weinberg's activities.

First, the documents unequivocally show that numerous telephone conversations and meetings in which Weinberg and middlemen were participants were neither recorded nor subsequently summarized in any document by Weinberg or by the FBI undercover agents. Some of these were unquestionably material conversations such as the meetings between Weinberg and Errichetti on January 19, the day before an Errichetti payoff; the meeting on January 20, immediately after the Errichetti payoff; the meeting on March 30 for 4 hours immediately before the MacDonald bribe; and numerous conversations between Weinberg and middleman Stowe, both in April and in November 1979. The files contain no explanation for the failure to record or to summarize these conversations. Nor do the files [21] contain any instruction or criticism from FBI Headquarters regarding the field agents' failure to compel Weinberg to record conversations. Numerous recorded conversations were only partially recorded, and the files again contain no criticism or instruction from FBI Headquarters regarding the field agents' failure to compel Weinberg to tape the entire contents of these conversations.

Second, the files show that, throughout the period of the Abscam operation, the FBI's internal policies required agents to prepare written summaries, called FD 302's, of all conversations in which the informant participated and which might be the subject of subsequent testimony. The files also show that prosecutors from the

New Jersey U.S. attorney's office and from the Department of Justice strike force in New Jersey complained on several occasions, beginning as early as April of 1979, about the failures to record or memorialize material conversations. These complaints were made to the FBI agents in New York, to attorneys in the strike force for the Eastern District of New York, and to Department of Justice officials in Washington, D.C. But no written response to those complaints appears in the files. No written instruction or criticism from FBI Headquarters or from the Department of Justice was sent to the New York agents or attorneys. It appears that, if FBI agents had conscientiously debriefed Weinberg and memorialized the debriefing after every unrecorded [22] conversation he had with a middleman, Weinberg's activities would have been more closely monitored in the field and could have been more readily reviewable by officials in Washington, D.C.

Third, the documents show that Weinberg moved to Florida in the middle of the Abscam operation, just before the asylum scenario was implemented. That put him and the principal undercover agent, Anthony Amoroso, roughly 1,500 miles away from the FBI supervisor in charge of the operation and from the strike force attorneys responsible for providing legal advice. This also occurred at a time when the only political corruption being investigated was located in New Jersey and when Abscam was not focusing on any other kind of criminal activity.

Fourth, the documents show that Weinberg was being used as an informant simultaneously in at least two different undercover operations, Abscam in New York and Goldcon in Florida. The documents reflect very little communication between the agents in charge of the two operations, so that Weinberg's activities in one jurisdiction were neither promptly nor fully described to the FBI in the other jurisdiction.

Fifth, Weinberg was not asked to consent to the use of monitoring equipment or a pen register on his home telephones. He was not required to submit a copy of his telephone charge records or of his telephone bills when he received them. FBI [23] agents and officials used virtually none of the available techniques to closely monitor Weinberg's telephone calls, except to ask him to record conversations that he considered material.

Sixth, as already noted, the FBI neither promptly transcribed all tapes given to them by Weinberg nor required him regularly to provide the tapes on a daily basis. The agents and supervisory personnel thereby failed to take the steps needed to have prompt, accurate knowledge of what Weinberg was saying to the various middlemen.

Finally, the FBI apparently did not number or otherwise identify recording tapes before giving them to Weinberg and did not keep a running log of which tapes were returned by him on what dates. This omission prevented the FBI from knowing how many tapes Weinberg might have lost or destroyed.

The next category is coordination between the FBI and other components of the Department of Justice.

The coordination occurred at several levels and in varying degrees, depending on the level. The documents reflect occasional meetings among officials of the Department of Justice in Washington and officials from FBI headquarters; occasional meetings among officials of the Department of Justice in Washington, prosecutors from various U.S. attorneys' offices and from various strike force offices, and FBI agents from the field; and, of course, numerous meetings [24] and telephone conversations, virtually on a daily basis in the last several months of the covert stage, between prosecutors having primary Abscam duties and FBI agents. The documents do not reflect the nature of the relationship or the allocation of authority between the FBI agents and the prosecuting attorneys during the covert stage.

The documents strongly show that throughout the covert and overt stages of the Abscam operation, Government attorneys outside of New York, namely those from New Jersey, Pennsylvania, and Washington, D.C., found it extremely difficult to obtain satisfactory cooperation from the FBI field agents in New York. The difficulties those attorneys faced included difficulty in obtaining meetings with the undercover agents; difficulty in obtaining meetings with Weinberg; difficulty in getting access to tapes; difficulty in getting access to transcripts; difficulty in obtaining timely, accurate, and complete information about recent meetings and other events; difficulty in obtaining important documents; and difficulty in obtaining accurate information about events that occurred in the early phase of Abscam, before the operation spread to New Jersey, Pennsylvania, and Washington, D.C.

The next topic is one that is not specifically enumerated in Senate Resolution 350, but it seems to us to be an integral [25] part of several of them. That is coordination of the various prosecutorial offices of the Department of Justice.

Abscam, of course, was a multidistrict operation from midway through and until the very end. It involved jurisdictions in New Jersey, New York, Washington, and Pennsylvania. The documents show that, almost from the moment the Federal prosecutors from outside of the Eastern District of New York were asked to participate in the Abscam investigation, they believed that they were being hindered in that effort by the Federal prosecutors in New York.

The documents also indicate that, as the operation progressed, the New York prosecutors did not follow specific instructions from ranking officials in the Department of Justice who were attempting to assign responsibilities for various aspects of the operation to achieve the most effective arrangement. One example of this is that on September 13, 1979, Deputy Assistant Attorney General Nathan met with prosecutors from New York and New Jersey and directed them that every prosecutable matter arising in New Jersey after September 11, 1979, was to be handled by the U.S. Attorney for the District of New Jersey. But on October 5, Mr. Nathan confirmed that by disseminating to the New York prosecutors and others a memorandum directing that all subjects in New Jersey and Pennsylvania were to be chosen by the New Jersey prosecutors, with the advice of the Pennsylvania [26] prosecutors; that all investigative activities in New Jersey and Pennsylvania were to be coordinated by the New Jersey prosecutors; and that Mr. Puccio of the Eastern District was to inform the New Jersey prosecutors of his wish to investigate any other subject, with New

Jersey prosecutors having a veto power over any such investigation asked for by Mr. Puccio unless and until they were overridden by the Department of Justice officials in Washington. Nevertheless, between September 13, 1979, and October 19, 1979, the New York prosecutors apparently arranged for several meetings with New Jersey subjects and held some of those meetings without having obtained the approval or participation of the New Jersey prosecutors.

The next enumerated category is the use of unwitting middlemen as a technique for identifying suspects and establishing reasonable suspicion.

This is an issue that affects several of the topics for investigation enumerated in Senate Resolution 350 and that was discussed at length in the select committee's recent hearings, especially as to the reliance of the FBI on unwitting middlemen's selfish interests as a safeguard of innocent citizens' privacy, reputations, and legal rights. In particular, FBI officials admitted that the alleged selfish interests of the middlemen constituted the only safeguard against the danger that, once a person's name had been mentioned by a middleman, [27] an innocent person would be brought before the videotaping cameras and subjected to discussions either approaching or actually culminating in a bribe offer.

The documents we have reviewed show that, consistent with that testimony, the Government's general practice throughout the Abscam operation was to rely upon the uncorroborated representations of middlemen who specified public officials who would accept bribes. These representations were usually uncorroborated in every sense of the word. First, the FBI obtained no extrinsic evidence that the named public officials had previously accepted or even solicited a bribe. Second, the FBI obtained no extrinsic evidence that the named public officials had committed, were committing, or were likely to commit a crime of political corruption, fraud, or breach of trust. Third, the FBI obtained no extrinsic evidence that the named public officials had committed, were committing, or were likely to commit any other crime. Fourth, the FBI obtained no detailed evidence showing that the middlemen knew the named public officials, knew those officials well enough to know of their corrupt activities, if they existed, or knew them well enough to approach them about the possibility of their accepting a bribe. Fifth, in several instances the FBI did not even have a tape of a conversation in which the middleman unequivocally stated that the named public official would take a bribe.

[28] Present and former officials of the FBI and of other components of the Department of Justice defended the reliance upon middlemen as a safeguard under these circumstances. But the documents in the files of the Department of Justice raise serious questions in our minds about the effectiveness and sufficiency of the purported safeguard.

Former Deputy Assistant Attorney General Nathan, who defended the use of middlemen most strongly, posited four reasons why a middleman would bring to the videotaping room only those public officials who he knew would accept a bribe. Mr. Nathan said that, first, the middleman could share in a bribe payment only if he produced a corrupt official. Second, the middleman would not want to jeopardize his ongoing criminal relationship with the undercover operatives, because that relationship offered him considerable financial gain. Third, he would not risk being reported to the authorities by an innocent official. Finally, he would not lightly risk the possibility of retribution, including physical harm, by the representatives of the sheiks, for lying to them and subjecting them to the risk of being reported and prosecuted.

The documents demonstrate, however, that these purported selfish concerns often failed to operate as safeguards. This is hardly surprising as to the first purported concern, that the middleman could share in a bribe payment only if he produced a corrupt public official, because the middleman had a [29] strong incentive to produce as many public officials as he could, hoping that some percentage of them could be persuaded to accept bribes, whatever their initial inclination or past record might have been.

The documents also show that, in the final months of Abscam's covert stage, FBI Agents Amoroso and Wald led middleman Howard Criden, at least, to believe that he would receive a payment from Abdul Enterprises merely for producing a public official at the videotaping site.

The second purported selfish concern of the middlemen suffers a critical weakness as well; it cannot work if the middleman in issue has not established the predicated ongoing lucrative criminal relationship. The documents show that when middlemen William Eden and William Rosenberg named Mayor Angelo Errichetti as a politician who would take a bribe, neither Eden nor Rosenberg had received any money from Abdul Enterprises, and neither Eden nor Rosenberg had produced any other public official for a bribe.

Similarly, when middleman Joseph Silvestri stated in October 1979 that a particular State public official would accept a bribe, Silvestri had not received any money from Abdul Enterprises, had not engaged in any criminal activity for or with Abdul Enterprises, and had not produced any other public official for a bribe. Similarly, middlemen Ciuzio and Weisz produced only one public official; middleman Stowe [30] produced only one public official; middlemen Katz, Sandy Williams, and Feinberg produced only one public official; and none of them had previously received any money from Abdul Enterprises or had engaged in criminal activities for or with Abdul Enterprises.

A weakness in the third purported selfish concern of the middlemen, the fear of being reported and prosecuted, is that the middlemen knew the slickly garrulous and streetwise nature of Melvin Weinberg. They therefore had to surmise that Weinberg and Amoroso would not be so foolish or naive as to make an unequivocal bribe offer without first softening up and feeling out the person to be bribed. The middlemen knew that it was in Weinberg's interest not to act in a manner that might lead an innocent official to report and get prosecution of a bribe offer. In addition, the middlemen may well have known how difficult it is to prove a bribe, especially where it is one person's uncorroborated word against the testimony of all other persons present at the meeting.

The fourth purported selfish concern of the middlemen, fear of retribution, is sound only if the middlemen are warned in advance and are punished when they produce people who do not take bribes. But the documents do not reflect that either of these necessary predicates existed in Abscam. The documents reflect only one instance in which Weinberg expressly told a middleman not to bring in public officials unless the [31] middleman was sure that the officials would accept bribes. The documents reflect no instance in which Weinberg even suggested to any middleman that serious consequences would follow the middleman's failure to produce only public officials who would accept bribes. Most important, in the three instances in which middlemen stated that they knew specified public officials who would accept bribes, produced those officials at bribe meetings, and then admitted that their prior statements had been lies, neither Weinberg nor the undercover agents terminated the relationship or threatened those middlemen with any sanction. In only one of the instances did Weinberg even criticize the middleman.

These weaknesses in the safeguard purportedly provided by the middlemen's selfish interests are demonstrated by the conduct of the middlemen themselves, Errichetti, Criden, and Silvestri. The documents show that none of these men was sufficiently deterred by the purported selfish interests not to bring in innocent people. As described above, there is substantial evidence that Errichetti duped former Commissioner MacDonald and pocketed the bribe or shared it with Weinberg. In one instance at least, a clever middleman, rather than fearing bringing in an innocent party, might have deliberately ensnared an innocent official and kept the entire bribe or shared it with Weinberg.

In June of 1979, the same middleman, Errichetti, arranged [32] a bribe meeting between the sheiks' representatives and a New Jersey public official. Before the meeting, Errichetti told Weinberg that the public official would accept a bribe and would guarantee a license for check-cashing privileges in a specified New Jersey city. At the meeting, it became clear that the official would not make such a guarantee; and Errichetti then admitted that he had not in fact discussed the matter with the official before the meeting.

In September 1979, the same middleman, Errichetti, arranged a bribe between the sheiks' representatives and a high-ranking immigration official. When the official appeared, however, he was not an official at all but one of Howard Criden's law partners. This event shows that both Criden and Errichetti were undeterred by any fear of retribution by the sheiks' representatives.

Criden's and Errichetti's judgment in that regard was reinforced by the FBI's reaction to the attempted fraud. Not only did the FBI not terminate the relationship with Criden or Errichetti, but on October 2, 1979, 2 weeks later, Director Webster ordered that no further bribe payments would be approved except to public officials produced by Criden and Errichetti. The documents show that, following these events, Criden placed telephone calls to lawyers he barely knew in distant parts of the country to ask if those lawyers could introduce him to Congressmen in their regions.

[33] FBI officials have stated that they did not learn until after Abscam's covert stage ended that Criden's law partner had been the actor in the September incident. Indeed, the documents do not reflect that the FBI made any effort to learn who the actor was or what relationship he even had to any of the middlemen.

Joseph Silvestri was credited in testimony with having introduced the undercover agents to Representative Thompson. The contemporaneous documents show, however, that the FBI believed that Criden had produced Thompson, and the documents strongly suggest that Silvestri was unaware of the illegal nature of Criden's plan when he introduced Criden to Thompson. After the Thompson introduction, Silvestri produced a public official who he said would accept a bribe; but, although money was paid to that person, the Government decided that the evidence was too ambiguous to prosecute. Silvestri next scheduled a bribe meeting for a Congressman, but he canceled that meeting at the last minute. He then arranged a meeting with another Congressman. When that meeting occurred, the FBI agents were too unsure of whether the Congressman knew why he was there to offer him a bribe. Then, on November 7, 1979, Silvestri was responsible for the incident involving Senator Pressler that has been fully explored during the public hearings.

In sum, the Abscam middlemen named at least 58 public [34] officials as persons who could be bribed. As to 25 of those 58, the middlemen made representations sufficiently specific to cause the FBI formally to approve arrangements for bribe meetings. Of the 27 meetings that were approved, 20 actually occurred. As to the 20 that occurred, the following results obtained:

At one meeting, the person who appeared was an actor pretending to be the named official.

At two other meetings, the middlemen admitted that they had lied about having established beforehand that the officials would accept bribes for specific acts, and no bribe was offered, then or later.

At five other meetings, no bribe was paid, although bribes were later paid in connection with two of these five.

As to one other meeting, the one attended by Kenneth MacDonald, it is our view that there is substantial evidence that the target had been duped by Mayor Errichetti, that the target was not there to receive a bribe, and that the target never received any of the money given to Mayor Errichetti.

As to one other meeting, money was transferred to the official under ambiguous circumstances; but he then sent a letter thanking the middleman for the legal retainer, and that official was not prosecuted.

Thus, 12 of the 20 public officials with whom meetings were held were convicted for their conduct at the meetings.

[35] In conclusion, this summary suggests that much of the information in the FBI confidential files suggests that the Abscam investigation could practicably have been conducted with more effective supervision, management, and control at various levels of the FBI and of other components of the Department of Justice. A comprehensive study of complex undercover operations conducted by personnel in the FBI and in other components of the Department of Justice in 1980–81 concluded that the experiences in Abscam and other operations suggested the desirability of several specific procedural innovations in future operations. A number of those suggestions were mentioned by former Deputy Assistant Attorney General Nathan when he testified before this committee.

I think it is also fair to say that some of those suggestions have found their way into the undercover guidelines that were adopted by the FBI after Abscam.

On the other hand, our review revealed no information that in our judgment, under the current state of the law, would have materially affected the critical factfinding process involved in any of the Abscam trials or due process hearings.

Finally, as stated at the outset, the purpose of this summary has been solely to provide the committee at this point in its study with the factual information in the FBI confidential files most relevant to the tasks enumerated in Senate Resolution 350. The overarching policy questions and **[36]** assessments with respect to Abscam in particular and undercover operations in general are matters to be addressed by the committee in its final report. Thank you.

Mr. NEAL. Mr. Chairman, could we ask that the entire statement be made a part of the record?

Senator MATHIAS. Without objection, the entire statement will be printed in the record as if read. Is there objection? If not, so ordered.

[Material referred to follows, including exhibits 17 and 18 submitted in response:]

[EXHIBIT 16]

REPORT TO THE SELECT COMMITTEE OF THE REVIEW BY ITS COUNSEL OF THE CONFIDENTIAL ABSCAM FILES OF THE FEDERAL BUREAU OF INVESTIGATION

I. INTRODUCTION

On June 17, 1982, the Select Committee and the Department of Justice reached an agreement whereby members of the Committee and counsel to the Committee were given access to most of the confidential documents generated during the covert stage of the undercover operation known as Abscam.[1] The agreement provides that access is limited to members of the Committee, counsel, and document custodians, and that, while the Committee and counsel may use and publicly disclose information in the documents, the specific document containing particular information may not be publicly identified. The agreement also preserves the Committee's right to seek unrestricted access to all documents, if the Committee concludes that the limited access is insufficient to enable it to perform its assigned tasks.

Pursuant to the agreement, counsel reviewed approximately fifty volumes of confidential Abscam files. Counsel offer this preliminary summary of that documentary review to supplement the testimony of witnesses heard in public hearings and to aid the Committee in evaluating the testimony, making findings and writing a final report to the Senate. The summary primarily parallels the enumeration of issues in Senate Resolution 350.

II. TARGETING OF INDIVIDUALS

In the documents we reviewed, we found no indication of targeting of specific individuals in the Abscam operation before their names were mentioned by middlemen;

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[1] Documents to which members of the Committee and counsel have been denied access include all prosecution memoranda; all grand jury material; all portions of Melvin Weinberg's informant file pertaining to Weinberg's pre-Abscam activities; documents prepared or compiled by the Office of Professional Responsibility of the Department of Justice pursuant to its investigation of Abscam matters; and documents prepared or compiled by the FBI Office of Professional Responsibility pursuant to its investigation of Abscam matters. In addition, numerous documents provided to us were redacted. We have no precise knowledge concerning the contents of the redacted portions of documents or of the contents of most of the documents withheld from us. We are continuing to negotiate with the Department of Justice in an effort to obtain access to these documents. An effort to compel production through subpoenae and litigation would undoubtedly require a substantial extension of the deadline for filing the Select Committee's final report to the Senate, which Senate Resolution 350 specifies as December 15, 1982.

nor do the documents indicate that investigative leads were not followed or were abandoned for non-law-enforcement purposes. It appears that all individuals to whom FBI Headquarters approved the offer of a bribe had been first identified to the FBI by middlemen (including public officials who had themselves already accepted illegal payments) as being officials who would accept bribes. Further, in every instance appearing in the documents, when a middleman mentioned a public official's name and subsequently represented to the FBI's informant or undercover agent that the target would take a bribe on a specific date and at a specific place, the FBI approved the bribe offer, almost always on the condition that the target must offer "proper assurances" to the FBI undercover agent making the payment. The approval documents also almost always contain a statement that a named prosecutor, usually Mr. Thomas Puccio, had concurred in the offering of a bribe. There are a few disturbing and unexplained exceptions in which there is no reference to a representation by the middleman that the subject will accept a bribe and no statement of concurrence by a prosecutor.

Because we have concluded that there is no evidence of targeting of an individual before that individual's name was mentioned by a middleman, one specific item should be mentioned. In July 1982 a reporter obtained, and disclosed a portion of the contents of, a memorandum dated October 5, 1979, written by then-Deputy Assistant Attorney General Irvin B. Nathan and addressed to several attorneys in the Department of Justice having major Abscam responsibilities. The memorandum is three pages long, single-spaced, and entitled "Prosecutorial Coordination of 'ABSCAM' Investigation." As its title suggests, the memorandum discussed the manner in which the attorneys in the four jurisdictions having Abscam responsibilities—New York, New Jersey, Pennsylvania and Washington, D.C.—should coordinate their investigative and prosecutorial tasks.

The memorandum's final paragraph notes that the investigation will not "continue for an unduly extended period of time." (Several other documents in the files of the Department of Justice show that termination of the operation had been considered months earlier; for example, on July 24, 1979, several FBI personnel and a strike force attorney met and concluded that the operation would terminate by the end of October 1979.) It was in this context that the memorandum then stated:

"Notwithstanding the existence of identified potential targets as to whom cases have not yet been completed, this phase of the investigation will be terminated, after a balancing of all of the potential considerations—including the right of the electorate to be apprised in a timely fashion of the charges against incumbent officeholders—by the Assistant Attorney General of the Criminal Division and the Director of the FBI, in close consultation with all of the affected prosecutors, at such time as the Assistant Attorney General and the Director deem appropriate."

The reporter cited the parenthetical portion of this statement—"including the right of the electorate to be apprised in a timely fashion of the charges against incumbent officeholders"—and concluded that it evinced improper political targeting. We find that conclusion unsupported by the memorandum itself, when the memorandum is considered in its entirety, by the other documents we have reviewed, by our interviews and examination of Mr. Nathan, and by the other circumstances.

It should first be noted that the memorandum was written only ten months before most of the 1980 congressional primary elections. The Department of Justice had this choice: either it could attempt to finish the covert investigation, seek indictments, and conduct trials before the summer primaries of 1980 so that the electorate would know, in time to cast informed votes, whether the incumbents were criminals, or it could delay disclosure until after the primaries or after the general elections so as to avoid the risk of prejudicing the reelection campaigns of congressmen who might be prosecuted but found innocent. The former course of action would subject the Department to criticism such as that voiced by the reporter, but the latter course of action would subject the Department to criticism for hiding information in order to help reelect the incumbents. Faced with this choice, Mr. Nathan opted to attempt to obtain a final resolution of all issues before the 1980 elections.

Further, the memorandum states that the decision of when to terminate will be made not by the author, Mr. Nathan, but by Messrs. Heymann and Webster in consultation with all affected prosecutors, of which there were nearly a dozen. It seems quite unlikely that Mr. Nathan would have memorialized and widely disseminated a political targeting conspiracy of such breadth, or even that several career prosecutors from several states, a Harvard law professor (Mr. Heymann), a former federal judge and the director of an independent law enforcement agency (Mr. Webster), and all of the addressees of the memorandum would have openly conspired to select political targets for improper reasons.

In sum, although the documents show that Abscam can and should be criticized in several respects, improper political targeting of members of a particular party or of a faction of a party is not one such respect.

III. ORIGIN AND INITIATION OF ABSCAM

The documents show that Abscam began as an undercover operation sometime in late 1977 or early 1978 without the specific approval of FBI Headquarters. During that period the Special Agent in Charge (SAC) of each of the 59 FBI field offices had authority to initiate an undercover operation that would cost the FBI less than $1,000, exclusive of salaries, and would last for less than six months. Abscam appears to have originated as one of these SAC-approved operations. The Abscam files, however, do not contain any document of the type now required for SAC-approved operations by Paragraph C of the Attorney General's Guidelines on FBI Undercover Operations (the "Undercover Guidelines")[2]: namely, a written determination by the SAC that the undercover operation satisfied various specified criteria.

In fact, there is essentially no documentation prepared during the first several months of the Abscam operation or reflecting what occurred during that period. The first document that reflects the existence of an undercover operation before mid-1978 was prepared in mid-1978 and states that from February 2, 1978, to April 26, 1978, Melvin Weinberg was involved on a daily basis with several FBI agents in the Brooklyn-Queens Field Office in developing an undercover operation code-named Abscam. Other documents show, however, that Weinberg had been working as an informant for that office since October 1977. It thus appears from the documents that Weinberg worked as an informant as early as October 1977 on matters that eventually led to the creation of the Abdul Enterprises scenario, but that the Abdul Enterprises scenario itself was not employed until February 2, 1978.

On May 25, 1978, the Assistant Director in charge of the FBI's New York field offices submitted a written request for FBI Headquarters' approval of Abscam as an undercover operation with authorization for expenditure of $30,000 over a six-month period. The stated purposes of the operation were (1) to recover securities involving Robert Vesco; (2) to compromise a specified Long Island hoodlum; (3) to obtain information about illegal financial dealings in Las Vegas; and (4) to obtain information about organized crime in Brooklyn. The request contained much of the information now required for requests to FBI Headquarters by Paragraphs D and E of the Undercover Guidelines, but the evidentiary support stated in the requests for approval of other undercover operations we have reviewed were far more detailed than the evidentiary basis stated in the Abscam application.

FBI Headquarters approved the Abscam request on June 27, 1978, and sent its approval to the New York office on July 25, 1978. There is no documentation reflecting any consideration by FBI Headquarters of the several factors now described in Paragraphs F-J of the Undercover Guidelines.[3] (Of course, the absence of documents discussing the relevant factors does not mean that the factors were not discussed, and FBI officials have orally stated that the relevant factors were, in fact, discussed at FBI Headquarters.)

IV. CONTINUATION, MODIFICATION, AND TERMINATION OF ABSCAM

The documents show that the covert stage of the Abscam operation continued until February 2, 1980. During that period the funding approved for the operation increased from $30,000 to $618,200, primarily for bribe payments ($552,000 paid, of which at least $125,000 was recovered) and payments to the informant, Melvin Weinberg. Also, in January 1979 the initial termination date of January 25, 1979, was approved for extension to June 25, 1979; on July 5, 1979, an extension to September 30, 1979, was granted; and in August of 1979 an indefinite extension was granted. On January 10, 1980, the Assistant Director of the Criminal Investigative Division, Francis M. Mullen, formally approved January 31, 1980, as the termination date for Abscam's covert phase.

In addition to the changes in approved financing and termination date for the covert operation, two changes in the criminal activity under investigation occurred between July 1978 and August 1979. The first change shifted the focus of the investigation from property crimes to political corruption, principally among New Jersey state and local officials. The second change expanded the focus to include an investigation of congressional corruption, using a new scenario, known as the "asylum scenario."

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[2] The Undercover Guidelines were not promulgated until January 5, 1981.

[3] The Undercover Operations Review Committee was not created until September 1978.

Today, under Paragraph M of the Undercover Guidelines, if an undercover operation is initially approved without reference to the possibility that the investigation will focus on political corruption, and if the operation subsequently seeks to focus on political corruption, the SAC in charge of the operation must submit to FBI Headquarters a written request for approval in accordance with the same procedures that are required to initiate an undercover operation investigating political corruption. Under Paragraph D of the Undercover Guidelines, if FBI Headquarters approves the request, the request must then be submitted for approval by the Undercover Operations Review Committee and, ultimately, by the Director or by the Assistant Director for the Criminal Investigative Division.

When the Abscam operation was in progress, however, no such requirement existed. Accordingly, the Abscam files we were provided neither contain nor refer to any request by any FBI agent or employee for approval of either the shift to an investigation of New Jersey political corruption or the shift to an investigation of congressional corruption.

This is not to say that FBI Headquarters was unaware of these shifts in substantive focus. FBI officials did not memorialize in documents all information transmitted to them by agents in the field by telephone, and FBI officials have stated that telephone contact between the field and Headquarters was substantial. Also, requests for increased funding, for extensions of the termination date, for approval of consensual electronic monitoring, and for approval of each bribe offer contained general descriptions, approximately one paragraph in length, that outlined the general contours of the operation.

The first document telling FBI Headquarters that bribery of politicians had arisen as a possible avenue of investigation was sent on December 21, 1978. On January 11, 1979, the FBI's Brooklyn-Queens Field Office told FBI Headquarters that Abscam was "targeted against high level political corruptors," and requested permission to offer Mayor Angelo Errichetti a $25,000 bribe. On February 9, 1979, the same office told FBI Headquarters that Abscam was "a major political corruption case involving the obtaining of a gambling license." None of these documents described how the shift to a focus on political corruption had occurred, who had conceived of or approved the shift, what was being done to corroborate middlemen's statements that particular politicians were corrupt, or how the political corruption investigation was to be implemented.

Because of the absence of any such description, the FBI files are ambiguous as to when and how the shift to a political corruption investigation began. FBI witnesses have stated that the shift occurred on November 16, 1978, when middleman William Rosenberg told Weinberg that Mayor Angelo Errichetti was corrupt and would engage in corrupt transactions with Abdul Enterprises. On the other hand, there is evidence that the shift occurred earlier and did not arise from any statement by Rosenberg. On October 2, 1980, at the Abscam trial of Representative John Jenrette, FBI Agent Gunnar Askeland, an agent in the FBI's Miami Field Office, testified that in May 1978 a cooperating citizen named Joseph Meltzer provided information about a local politician in West Palm Beach, Florida, and that, as a result, Askeland opened an undercover operation in August 1978 to investigate that politician and organized crime people. The operation, called PALMSCAM, lasted until early October 1978.

During that same period, Agent Askeland also worked as an Abscam undercover agent in Florida. In that role, he was Melvin Weinberg's contact agent in Florida, which involved attending meetings with Weinberg, processing leads, and handling administrative needs. Askeland testified that, in his capacity as an Abscam agent, in late October 1978 he instructed Weinberg that the FBI was no longer interested in pursuing any investigation of illegal securities and that "the new targets were going to be . . . deals with Las Vegas and Atlantic City and political corruption." (Jenrette Trial Transcript at 4172.)

Thus, if Agent Askeland's testimony is correct, it shows that Abscam was used as early as July 1978, at least in a peripheral way, to assist an investigation of corrupt politicians and that by late October 1978 Weinberg had been instructed that Abscam's central focus had turned to political corruption. If Askeland was correct, the documents show a two-month lag between the time when the operation's focus turned to political corruption and the date when FBI Headquarters was told of the shift.

The FBI Abscam files support Agent Askeland's testimony, but not conclusively so. The documents show that on September 13, 1978, in a conversation with a businessman named Herman Weiss, Weinberg raised the matter of corrupt politicians.

In particular, Weinberg told Weiss that the sheik would not agree to allow any other person to hold an ownership interest in an Abdul Enterprises venture unless that person were a politician who had to be bribed.

In addition, on October 6, 1978, in a conversation with businessmen William Rosenberg and Dan Minski, Weinberg again raised the issue of corrupt politicians. On this occasion he did so expressly in the context of a discussion of gambling in Atlantic City, New Jersey, and indicated that Abdul Enterprises would provide financial support to Minski and Rosenberg in Atlantic City if they could show him that they had "the juice." It was Rosenberg who, on November 16, 1979, told Weinberg that Abscam defendant Angelo Errichetti, the Mayor of Camden, New Jersey, was corrupt and who then arranged for Errichetti's introduction to an undercover agent.

Weinberg's broaching of the political corruption issue on those two occasions may have occurred pursuant to the instructions Agent Askeland described; but, in public testimony by FBI officials, it has been suggested that the introduction of the subject of public officials by Weinberg on September 13 and October 6, 1978, was simply his spontaneous elaboration of the original scenario. Thus, the record is unclear as to why and on whose authority the focus of Abscam changed from an undercover operation aimed at property crimes to one directed to political corruption.

The origin of the asylum scenario is equally unclear. The first document sent to FBI Headquarters referring to the asylum scenario was sent on August 14, 1979. Neither that document nor any other sent to FBI Headquarters before bribes were offered to congressmen described the manner in which the asylum scenario was created, identified who created it, or explained how it was being developed and implemented.

An earlier document, dated July 30, 1979, describes discussions that occurred on the FBI's Abscam yacht, "The Left Hand," on July 26, 1979, including Agent Anthony Amoroso's mention of the sheiks' concern about having to flee to the United States and Mayor Errichetti's statement that he had political connections who could help. That document does not appear to have been sent to FBI Headquarters. Moreover, it does not state whether or not Amoroso had discussed such a scenario with his supervisor, John Good, or with the informant, Melvin Weinberg, or with any other person before July 26, 1979. In short, it does not state, expressly or implicitly, that the asylum scenario spontaneously arose on July 26, 1979.

The FBI documents contain substantial evidence that the asylum scenario was developed earlier. On July 14, 1979, in a conversation with one of the middlemen, George Katz, Weinberg raised and discussed the possibility that the sheiks might have to flee their country. He also described the sheiks' concern that they might have difficulty getting into the United States. Katz replied by stating that the sheiks would need many friends in Congress. Weinberg then told Katz that the sheiks were in fact looking for every political friend they could get and that they already had an appointment with a congressman on August 6, 1979. (That appointment, which had been scheduled with Representative Jenrette on July 11, 1979, through middleman John Stowe, was cancelled some time before August 6, 1979. There is no document seeking FBI Headquarters approval for the meeting, describing the purpose of the meeting, or describing what scenario was to be used.)

The documents thus provide some evidence that the asylum scenario, or at least the plan to investigate congressional corruption, began on or about July 26, 1979. They provide more substantial evidence that it began on July 14, 1979. But, in addition, there is a small amount of evidence that the interest in investigating members of Congress began even earlier. On October 17 or 18, 1978, middleman John Stowe told Weinberg that Stowe had a congressman friend who was "as big a crook as" Stowe and who would help get certificates of deposit into the United States from Switzerland. Between that date and April 18, 1979, Weinberg had at least sixteen unrecorded conversations with Stowe. On April 18, 1979, Stowe told Weinberg that Representative Jenrette was the friend to whom he, Stowe, had referred earlier. On April 19, 1979, the FBI's Miami Field Office requested a background search on Representative Jenrette.

Another early instance in which congressmen were mentioned occurred on March 30, 1979. On that date Weinberg met with Errichetti for more than four hours, and their conversation was neither recorded nor later memorialized in any FBI document. On that same date, Errichetti gave Weinberg a handwritten list of politicians who Errichetti said would sell their offices, and that list included two congressmen, one of whom was Representative Michael "Ozzie" Myers.

The basis for the termination of the Abscam operation is much clearer in the documents than are the bases for the shifts in focus. The request to terminate that was approved on January 10, 1980, states three principal grounds for the request: (1)

Agent Amoroso had concluded that the operation had become too complex to continue; (2) there had been several media inquiries, which showed that security had become more difficult to maintain; and (3) knowledge of the operation had become widespread in the law enforcement community, creating the risk of further leaks. The New York agents and prosecutors had asked to terminate the operation earlier, but FBI Headquarters and the Department of Justice had decided to continue the investigation until the end of January to enable the Philadelphia and New Jersey Abscam personnel to pursue their remaining leads.

V. TECHNIQUES EMPLOYED IN THE ABSCAM OPERATION

The primary techniques that the documents show were employed in Abscam were consensual electronic monitoring of many telephone conversations and of meetings by the informant, Melvin Weinberg, and videotaping of meetings at which the FBI undercover agents were prepared to offer, or actually did offer, bribes to public officials. The documents do not reveal that any wiretap or pen register was conducted, requested, or considered. The documents show that background checks of FBI files were requested and conducted on Representatives Jenrette and Kelly and on Mayor Errichetti before those individuals were offered bribes, but no similar documentation exists for the other public official defendants. The documents also reflect no attempt by the FBI or other Department of Justice personnel to obtain extrinsic evidence of the reliability of the representation of any middleman—for example, the evidence of reliability that is required for law enforcement officers to obtain a search warrant on the basis of statements by an informant. *See Aguilar* v. *Texas*, 378 U.S. 108, 114 (1964); *Spinelli* v. *United States*, 393 U.S. 410, 415–16 (1969).

VI. FBI MANAGEMENT, SUPERVISION, AND DIRECTION OF THE ABSCAM OPERATION

The documents reflect that the day-to-day management, supervision, and direction of the Abscam investigation was left to the agents in the field. As previously stated, however, periodic review of the broad contours of the operation, and decisions concerning funding, termination date, and specific bribe offers, occurred at FBI Headquarters. Every meeting at which a bribe was to be offered was approved in advance by several high-ranking FBI officials.

The documents that were submitted to the decision-making officials at FBI Headquarters, however, contained only sparse information; and, occasionally, the information provided to FBI Headquarters was incomplete and misleading. For example, when the Miami Field Office reported on February 9, 1979, that Weinberg had recovered $300 million in fraudulent certificates of deposit from William Rosenberg, the report stated that the recovery took fraudulent securities out of circulation and thereby prevented large losses to United States banks. Similarly, on May 21, 1979, the Miami Field Office requested a $15,000 payment for Weinberg and again relied upon Weinberg's recovery of fraudulent securities, including the Rosenberg securities previously described and additional securities that appear to have come from Rosenberg. In fact, however, other contemporaneous FBI documents show that Rosenberg had the securities produced at Weinberg's request and that Weinberg even had to explain to Rosenberg how to have the securities produced. Thus, the securities would not have existed had the Abscam informant not caused them to be produced, and no bank was ever in any danger of being defrauded. Moreover, there is some evidence in the FBI files suggesting that Weinberg even provided the blank securities to Rosenberg to complete.

The FBI documents also show that in the latter half of 1979 and in early 1980, as Abscam became more complex and involved more personnel and investigative leads, there were several meetings attended by FBI field operatives and representatives from FBI Headquarters. Some of these meetings were attended by attorneys from the Department of Justice in Washington, D.C., from strike force offices, from United States Attorney offices, or from several of those offices. The documents only briefly discuss the subject matter of those meetings.[4]

In late September 1979, Abscam was designated a "Bureau Special" operation. This meant that FBI Headquarters thereafter more closely supervised the operation; for example, the case supervisor at FBI Headquarters was relieved of responsibility for other cases, and FBI Headquarters began to maintain its own duplicate originals of tapes. The documents do not reflect what precipitated this redesignation, and the circumstances that warranted close Headquarters supervision over Abscam existed long before the autumn of 1979.

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[4] We again note that FBI officials have stated that management, supervision, and direction of the operation occurred through meetings and telephone conversations not referred to in the documents.

The FBI agent in the field who supervised on a daily basis was John Good, who was the Supervisory Senior Resident Agent in the Hauppauge Resident Agency. The documents do not reflect that the Special Agent in Charge who was Mr. Good's immediate superior participated in any meeting with Mr. Good or with the other Abscam agents, although as a formal matter documents going from New York to FBI Headquarters were designated as having been sent by the Special Agent in Charge.

VII. MANAGEMENT, DIRECTION, SUPERVISION AND CONTROL OF UNDERCOVER AGENTS, EMPLOYEES, AND INFORMANTS IN ABSCAM

Weinberg, who had been an FBI informant between 1969 and 1976 and had been closed out as an informant in late 1976 or early 1977, was reopened as an informant by the FBI's Brooklyn-Queens Field Office in mid-1977, shortly after having pleaded guilty in federal court in Pittsburgh to ten counts of mail fraud. We found no document reflecting a consideration of Weinberg's suitability as an informant under the Attorney General's FBI Guidelines for Use of Informants, which were then in effect; nor did we find any document reflecting what we were told by FBI officials: that Weinberg was closed down as an informant because the FBI discovered during the pre-Abscam period he had been engaging in illegal activities while operating as an informant. The files do not contain any document mentioning the risk involved, or any special procedures to be followed, in using an informant who has recently been found to have been conducting his own illegal activities while serving as an FBI informant.

The documents also do not expressly describe the measures taken to manage, direct, supervise, or control either the undercover agents or the informant; but they do reflect that Weinberg's activities were monitored in several ways. FBI undercover agents attended many of the meetings between Weinberg and middlemen. Undercover agents attended and directed each of the meetings at which a bribe had been authorized to be offered to a public official. Prosecuting attorneys and FBI agents had numerous meetings with Weinberg. Approximately one thousand conversations in which Weinberg participated were at least partially recorded and transcribed.

Nevertheless, the files contain substantial evidence that Weinberg managed to deceive the agents and prosecutors and improperly to obtain federal funds. The most serious instances reflected in the documents are as follows:

(1) On January 29, 1979, FBI Agent Margot Denedy's picture appeared on the front page of Newsday and the Philadelphia Inquirer as an agent who had participated in the arrest of a hijacker at JFK Airport. Before that date, Denedy had been one of the Abscam undercover agents.

On February 5, 1979, Weinberg told Agent McCarthy that on January 31, 1979, while in Florida, he had received telephone calls from middlemen Eden, Errichetti and Rosenberg in which each of those men had claimed he had seen the Denedy picture. Weinberg further told McCarthy that he had convinced each of the middlemen that the person in the picture could not have been Denedy. Agency McCarthy noted that Weinberg's willingness to continue the operation placed Weinberg in great physical danger, because a middleman or other subject might learn that he was working for the FBI.

On February 16, 1979, the FBI's Brooklyn-Queens Office requested a lump-sum payment for Weinberg. The request summarizes Weinberg's recent accomplishments with respect to Rosenberg and Errichetti, including the Denedy incident, and it demonstrates that Weinberg's role in the Denedy incident was an important reason for the bonus request. FBI headquarters approved payment to Weinberg on the specific basis that Weinberg's ingenuity had saved the operation.

On December 17, 1980, and on February 16, 1981, however, Weinberg admitted under oath that Errichetti had never even seen the Denedy photograph and had not discussed it with Weinberg. Thus, Weinberg obtained a bonus on the basis of misrepresentations he made to an FBI agent. Other information that we have obtained and that we are still investigating suggests that every aspect of the story Weinberg told to McCarthy was false, except for the appearance of Agent Denedy's picture in the newspapers.

(2) On January 20, 1979, Agent McCarthy paid Mayor Errichetti a $25,000 bribe. There is no contemporaneous document showing that the FBI knew or believed that Weinberg met with Errichetti on either January 19 or January 20. In June 1980, however, Errichetti's nephew, Joseph DiLorenzo, told prosecutors that Weinberg had met with Errichetti at a Holiday Inn on Long Island on January 19, 1979, and

on January 20, 1979, after the pay-off had been made to Errichetti, and that at the January 20 meeting Weinberg had been given an envelope. Shortly after the DiLorenzo interview, Weinberg, when asked about the meeting, denied having ever been at the Holiday Inn on those dates. Later in 1980, prosecutors obtained records of Weinberg's telephone charge card, which showed that he had made a call on January 19, 1979, from that motel. These events suggest that Weinberg may have shared in the Errichetti bribe payment and that, at the least, he had attempted to conceal from the FBI meetings he had had with subjects of the investigation.

(3) There is substantial evidence suggesting that on April 1, 1979, the day after a bribe payment of $100,000 in a briefcase was handed to Mayor Errichetti in the presence of New Jersey Casino Control Commission Vice-Chairman Kenneth MacDonald, Errichetti met with Weinberg in Long Island and gave Weinberg a briefcase containing a portion of the bribe payment. The principal evidence, much of which was discussed during the Select Committee's recent public hearings, consists of the following:

(*a*) Joseph DiLorenzo's statements to government agents and prosecutors that he drove Errichetti to such a meeting and that Errichetti gave a briefcase to Weinberg;

(*b*) The audio tape created by Weinberg in which he recites a preamble stating that, at the time he was placing the recorded call, it was 2:30 p.m. on April 1, 1979, and that he was calling Mayor Errichetti. Out of approximately 1,000 tapes, this is the only one of which we know with a preamble by Weinberg stating the time and date. Further, both the transcript of this tape and the tape itself lead the reader and listener to believe that the preamble and conversation that follows it were separated by a period of mere seconds; but that was not, in fact, the case. Rather, the telephone toll records for Weinberg's telephone show that the conversation actually occurred several hours later, and an FBI laboratory analysis of the tape shows that the recording machine was stopped after the preamble and was restarted before the conversation. Moreover, before the toll records had been produced and before the laboratory analysis had been conducted, Washington, D.C., prosecutors were told that the tape proved that Errichetti could not have met Weinberg in Long Island at the time claimed by DiLorenzo, because Errichetti could not have returned from Long Island to Camden in time to talk to Weinberg at 2:30 p.m.

(*c*) A document in the FBI files shows that on October 20, 1979, Errichetti told an FBI informant that MacDonald would not and did not take any money from Errichetti.

(4) There is substantial evidence that Weinberg solicited and received several gifts from middlemen during the operation without telling the FBI, and that his testimony denying receipt of those gifts was false. Specifically, there is evidence that Weinberg received three Piaget wristwatches, a briefcase, a wallet, a Betamax video recorder, and $2,000 worth of liquor from George Katz; cash and an anti-radar device from Carpentier; cash from Rosenberg; cash from Eden; and a microwave oven, dishes, a video recorder, a Harman-Kardon stereo receiver, a pair of Genesis III stereo speakers, and three Sony television sets from Errichetti. The documents show that Weinberg reported his having received the three watches from Katz, but the documents do not suggest that he reported any of the other items. During the subsequent court proceedings, Weinberg admitted that he had received the briefcase, wallet and anti-radar device, admitted that he had received a bottle or two of liquor, stated that some of the cash transfers had occurred but had been loans, and denied having received the other items. The evidence as to most of those other items consists of statements made by the donors in government interviews or in court proceedings. A thorough FBI investigation of the alleged Errichetti gifts provides substantial corroboration for the allegations, and items of the same brands and models as many of those alleged to have been given to Weinberg were found in Weinberg's home in Florida.

The documents strongly suggest that additional practicable measures could have been taken to monitor and control Weinberg's activities. First, the documents unequivocally show that numerous telephone conversations and meetings in which Weinberg and middlemen were participants were neither recorded nor subsequently summarized in any document. Some of these were unquestionably material, such as the meetings between Weinberg and Errichetti on January 19, 1979, immediately before the Errichetti bribe; on January 20, 1979, immediately after the Errichetti bribe; and on March 30, 1979, immediately before the MacDonald bribe; and numerous conversations between Weinberg and Stowe both in April and in November 1979. The files contain no explanation for the failure to record or to summarize these conversations. Nor do the files contain any instruction or criticism from FBI Headquarters regarding the field agents' failure to compel Weinberg to record conversations. Similarly, numerous recorded conversations were only partially recorded, but the files contain no criticism or instruction from FBI Headquarters regarding the field agents' failure to compel Weinberg to tape the entire contents of such conversations.

Second, the files show that, throughout the period of the Abscam operation, the FBI's internal policies required agents to prepare written summaries, called FD 302s, of all conversations in which the informant participated and which might be the subject of subsequent testimony. The files also show that prosecutors from the New Jersey United States Attorney's office and from the Department of Justice Strike Force in New Jersey complained on several occasions, beginning as early as April 1979, about the failures to record or memorialize material conversations. These complaints were made to the FBI agents in New York, to attorneys in the Strike Force for the Eastern District of New York, and to Department of Justice officials in Washington, D.C. No written response to those complaints appears in the files. No written instruction or criticism from FBI Headquarters or from the Department of Justice was sent to the New York agents or attorneys. (It should also be noted that Agents McCarthy and Askeland prepared numerous FD 302s during their undercover assignments in Abscam; it was only when their active participation in Abscam ceased that the preparation of FD 302s came to a virtual halt.) It appears that, if FBI agents had conscientiously debriefed Weinberg and memorialized the debriefing after every unrecorded conversation he had with a middleman, Weinberg's activities would have been more closely monitored in the field and could have been more readily reviewed by officials in Washington, D.C.

Third, the documents show that Weinberg moved to Florida in the middle of the Abscam operation, just before the asylum scenario was implemented. That put him and the principal undercover agent, Anthony Amoroso, roughly 1,500 miles away from the FBI supervisor in charge of the operation and from the strike force attorneys responsible for providing legal advice. Moreover, this occurred at a time when the only political corruption being investigated was located in New Jersey and when Abscam was not focusing on any other kind of criminal activity.

Fourth, the documents show that Weinberg was being used as an informant simultaneously in at least two different undercover operations, Abscam in New York and Goldcon in Florida. The documents also reflect very little communication between the agents in charge of the two operations, so that Weinberg's activities in one jurisdiction were neither promptly nor fully described to FBI agents in the other jurisdiction.

Fifth, Weinberg was not asked to consent to the use of monitoring equipment or a pen register on his home telephone. He was not required to submit a copy of his telephone charge records or of his telephone bills when he received them. Thus, FBI agents and officials used virtually none of the available techniques to closely monitor Weinberg's telephone calls, except to ask him to record conversations he considered material.

Sixth, as already noted above, the FBI neither promptly transcribed all tapes given to them by Weinberg nor required him to provide the tapes on a daily basis. The agents and supervisory personnel thereby failed to take the steps needed to have prompt, accurate knowledge of what Weinberg was saying to the various middlemen.

Finally, the FBI apparently did not number or otherwise identify recording tapes before giving them to Weinberg and did not keep any log of which tapes were returned by him on what dates. This omission prevented the FBI from knowing how many tapes Weinberg lost or destroyed.

VIII. COORDINATION BETWEEN THE FBI AND OTHER COMPONENTS OF THE DEPARTMENT OF JUSTICE

Coordination between the FBI and other components of the Department of Justice occurred at several levels and in varying degrees. The documents reflect occasional meetings among officials of the Department of Justice in Washington, D.C., and officials from FBI Headquarters; occasional meetings among officials of the Department of justice in Washington, D.C., prosecutors from various United States Attorneys' offices and from various strike force offices, and FBI agents from the field; and numerous meetings and telephone conversations, essentially on a daily basis in the last several months of the covert stage, between prosecutors having primary Abscam duties and FBI agents. The documents do not clearly reflect the nature of the relationship or the allocation of authority between the FBI agents and the prosecuting attorneys during the covert stage.

The documents strongly show that, throughout the covert and overt stages of the Abscam operation, government attorneys from New Jersey, Pennsylvania, and

Washington, D.C., found it extremely difficult to obtain satisfactory cooperation from the FBI field agents in New York. The difficulties those attorneys faced included difficulty in obtaining meetings with the undercover agents; difficulty in obtaining meetings with Weinberg; difficulty in getting access to tapes; difficulty in getting access to tape transcripts; difficulty in obtaining information about scheduled meetings and other events; difficulty in obtaining timely, accurate, and complete information about recent meetings and other events; difficulty in obtaining important documents; and difficulty in obtaining accurate information about events that occurred in the early phases of Abscam, before the operation spread to New Jersey, Pennsylvania, and Washington, D.C.

One example of the numerous problems revealed by the documents is presented by the events surrounding a document known as the Fuller 302. Prosecutors outside of New York did not learn of the existence of the Fuller 302, which had been prepared in early 1979, until late 1980. When an Assistant United States Attorney in Washington, D.C., who was preparing to prosecute one of the Abscam cases, learned of the 302, he asked Agent Fuller for a copy. Instead of providing the copy, Agent Fuller called FBI Headquarters for instructions and, pursuant to the instructions he received, sent the document to the Brooklyn-Queens Field Office. he did not simultaneously send a copy to the prosecutor who had requested it.

IX. COORDINATION OF THE VARIOUS PROSECUTORIAL OFFICES OF THE DEPARTMENT OF JUSTICE

This matter is not one of the specially enumerated areas stated in Senate Resolution 350, but the confidential documents to which we have been given access strongly suggest that some of the problems in the Abscam operation arose or continued because of difficulties in this area. To appreciate the nature and scope of the problems, one must understand that Abscam began as an investigation of property crimes in New York and of possible organized crime connections to Las Vegas, and that it then rapidly expanded to New Jersey, to Pennsylvania, and to Washington, D.C. Accordingly, federal prosecutors in several jurisdictions had prosecutorial and investigative responsibilities, and the Department of Justice officials in Washington, D.C., had to assign responsibilities and asssure cooperation among all of the offices involved.

The documents show that, almost from the moment that federal prosecutors from outside of New York were asked to participate in the Abscam investigation, they believed that they were being hindered in that effort by the federal prosecutors in New York. The documents also indicate that, as the operation progressed, the New York prosecutors did not follow specific instructions from ranking officials in the Department of Justice who were attempting to assign responsibilities for various aspects of the operation to achieve the most effective arrangement. For example, on September 13, 1979, Deputy Assistant Attorney General Nathan met with prosecutors from New York and New Jersey and directed, among other things, that every prosecutable matter arising in New Jersey after September 11, 1979, was to be handled by the United States Attorney for the District of New Jersey. On October 5, 1979, Mr. Nathan disseminated to the New York prosecutors and others a memorandum directing that all subjects in New Jersey and Pennsylvania were to be chosen by the New Jersey prosecutors, with the advice of the Pennsylvania prosecutors; that all investigative activities in New Jersey and Pennsylvania were to be coordinated by the New Jersey prosecutors; and that Mr. Puccio was to inform the New Jersey prosecutors of his wish to investigate any other subject, with New Jersy prosecutors having a veto power over any such investigation unless and until they were overridden by Department of Justice officials in Washington, D.C. Nevertheless, between September 13, 1979, and October 19, 1979, the New York prosecutors apparently arranged for several meetings with New Jersey subjects and held some of those meetings without having informed the New Jersey prosecutors, and certainly without their approval or participation.

It should be noted that, through interviews and hearings, we have obtained substantial additional information concerning the nature and scope of the problems encountered in the attempts to coordinate the activities of the several prosecutorial offices involved in Abscam. That additional information will, of course, be presented in an appropriate report.

X. THE USE OF UNWITTING MIDDLEMEN AS A TECHNIQUE FOR IDENTIFYING SUSPECTS AND ESTABLISHING REASONABLE SUSPICION

One issue that affects several of the topics for investigation enumerated in Senate Resolution 350 and that was discussed at length in the Select Committee's recent public hearings is the government's reliance on the unwitting middlemen's selfish interests as a safeguard of innocent citizens' privacy, reputations, and legal rights. In particular, FBI offficials testified that, once a middleman represented that a target would accept a bribe, the alleged selfish interests of the middlemen constituted the only safeguard against the danger that an innocent person would be brought before the videotaping cameras and subjected to discussions either approaching or actually cluminating in a bribe offer.

The documents we have reviewed show that, consistent with that testimony, the government's general practice in the Abscam operation was to rely upon the uncorroborated representations of middlemen that specified public officials would accept bribes. These representations were usually uncorroborated in every sense of the word. First, the FBI obtained no extrinsic evidence that the named public officials had previously accepted or solicited a bribe. Second, the FBI obtained no extrinsic evidence that the named public official had committed, were committing, or were likely to commit a crime of political corruption, fraud, or breach of trust. Third, the FBI obtained no extrinsic evidence that the named public officials had committed, were committing, or were likely to commit any other crime. Fourth, the FBI obtained no detailed evidence showing that the middlemen knew the named public officials, knew those officials well enough to know of their corrupt activities, or knew them well enough to approach them about a possible bribe. Fifth, in several instances the FBI did not even have a tape of a conversation in which the middleman unequivocally stated that the named public official would take a bribe.

Present and former officials of the FBI and of other components of the Department of Justice defended the reliance upon middlemen as a safeguard under these circumstances. But the documents in the files of the Department of Justice raise serious questions about the effectiveness and sufficiency of the purported safeguard.

Former Deputy Assistant Attorney General Nathan, who defended the use of middlemen most strongly, posited four reasons why a middleman would bring to the videotaping room only those public officials who he knew would accept a bribe. First, the middleman could share in a bribe payment only if he produced a corrupt official. Second, the middleman would not want to jeopardize his ongoing criminal relationship with the undercover operatives, because that relationship offered him considerable financial gain. Third, he would not risk being reported to the authorities by an innocent official. Finally, he would not lightly risk the possibility of retribution, including physical harm, by the representatives of the sheiks, for lying to them and subjecting them to the risk of being reported and prosecuted.

The documents demonstrate, however, that these purported selfish concerns often failed to operate as safeguards. This is hardly surprising as to the first purported concern—that the middlemen could share in a bribe payment only if he produced a corrupt public official—because the middleman had a strong incentive to produce as many public officials as he could, hoping that some percentage of them could be persuaded to accept bribes, whatever their initial inclinations or past records might have been. Moreover, the documents show that, in the final months of Abscam's covert stage, FBI Agents Amoroso and Wald led middleman Howard Criden to believe that he would receive a payment from Abdul Enterprises for merely producing a public official at the videotaping site.[5]

The second purported selfish concern of the middlemen—the fear of jeopardizing an ongoing lucrative criminal relationship—suffers a critical weakness; namely, it cannot work if the middleman in issue has not established the predicated ongoing lucrative criminal relationship. The documents show, for example, that when middlemen William Eden and William Rosenberg named Mayor Angelo Errichetti as a politician who would take a bribe, neither Eden nor Rosenberg had received any money from Abdul Enterprises, and neither Eden nor Rosenberg had produced any other public official for a bribe. Similarly, when middlemen Joseph Silvestri stated in October 1979 that a particular state public official would accept a bribe, Silvestri had not received any money from Abdul Enterprises, had not engaged in any criminal activity for or with Abdul Enterprises, and had not produced any other public official for a bribe (although he had, unbeknownst to the FBI, introduced Representative Thompson to Howard Criden). Similarly, middlemen Ciuzio and Weisz produced only one public official (Respresentative Kelly); middleman Stowe produced only one public official (Representative Jenrette); middlemen Katz, Sandy Williams, and Feinberg produced only one pulic official (Senator Williams); and none of these middlemen had previously received any money from Abdul Enterprises or engaged in criminal activities for or with Abdul Enterprises.

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[5] The FBI contends this was a pretext to keep Criden "on the string" as the covert operation drew to a close.

One weakness in the third purported selfish concern of the middlemen—the fear of being reported and prosecuted by an innocent public official—is that the middlemen knew the slickly garrulous and street-wise nature of Melvin Weinberg. They therefore had to surmise that Weinberg and Amoroso would not be so foolish or naive as to make an unequivocal bribe offer without first softening up and feeling out the person to be bribed; that is, the middlemen knew that it was in Weinberg's interest not to act in a manner that might lead an innocent person to report a bribe offer. In addition, the middlemen may well have known how difficult it is to prove a bribe, especially where it is one person's uncorroborated word against the testimony of all others present at a meeting.

The fourth purported selfish concern of the middlemen—fear of retribution by the sheiks' representatives—is sound only if the middlemen are warned in advance and are punished when they produce people who do not take bribes. The documents do not reflect that either of these necessary predicates existed in Abscam. The documents reflect only once instance in which Weinberg expressly told a middleman not to bring in public officials unless the middleman was sure that the officials would accept bribes. The documents reflect no instance in which Weinberg even suggested to any middleman that serious consequences would follow the middleman's failure to produce only public officials who would accept bribes. Most important, in the three instances in which middlemen stated that they knew that specified public officials would accept bribes, produced those officials at bribe meetings, and then admitted that the prior statements had been lies, neither Weinberg nor the undercover agents terminated the relationship or threatened the middlemen. In only one of those instances did Weinberg even criticize the middleman.

These weaknesses in the safeguard purportedly provided by the middlemen's selfish interests are demonstrated by the conduct of middlemen Errichetti, Criden, and Silvestri. The documents show that none of these men was sufficiently deterred by the purported selfish interests. As described above, there is substantial evidence that Errichetti duped former Commissioner MacDonald and pocketed that bribe. Thus, in at least one case, a clever middleman, rather than fearing bringing in an innocent party, might have deliberately ensnared an innocent official and kept the entire bribe or shared it with Weinberg.

In June of 1979, Errichetti arranged a bribe meeting between the sheiks' representatives and a New Jersey public official. Before the meeting, Errichetti told Weinberg that the public official would accept a bribe and would guarantee a license for check-cashing privileges in specified New Jersey cities. At the meeting, it became clear that the official would not, and probably could not, make such a guarantee; and Errichetti then admitted that he had not in fact discussed the matter with the official before the meeting.

In September 1979, Errichetti arranged a bribe meeting between the sheiks' representatives and a high-ranking immigration official. When the "official" appeared, however, he was not an official at all, but one of Howard Criden's law partners. This event shows that both Criden and Errichetti were undeterred by any fear of retribution by the sheiks' representatives.

Moreover, their judgment was reinforced by the FBI's reaction to the attempted fraud. Not only did the FBI not terminate the relationship, but on October 2, 1979, Director Webster ordered that no further bribe payments would be approved, except to public officials produced by Criden and Errichetti. The documents show that, following these events, Criden placed telephone calls to lawyers he barely knew in distant parts of the country to ask if those lawyers could introduce him to congressmen in their regions.

FBI officials have stated that they did not learn until after Abscam's covert stage ended that Criden's law partner had been the actor in the September incident. The documents contain no contrary information; indeed, they do not reflect that the FBI made any effort to learn who the actor was or what relationship he had to any of the middlemen.

Joseph Silvestri was credited in testimony with having introduced the undercover agents to Representative Thompson. The contemporaneous documents show, however, that the FBI believed that Criden had produced Thompson, and the documents strongly suggest that Silvestri was unaware of the illegal nature of Criden's plan when he introduced Criden to Thompson. After the Thompson introduction, Silvestri produced a public official who he had said would accept a bribe; but, although money was paid to the official, the government decided that the evidence was too ambiguous to prosecute. Silvestri next scheduled a bribe meeting for a congressman, but cancelled the meeting at the last minute. He then arranged a meeting with another congressman. When that meeting occurred, the FBI agents were too unsure of whether the congressman knew why he was there to offer a bribe. Then, on November 7, 1979, Silvestri was responsible for the incident involving Senator Pressler that has been fully explored during the public hearings.

In sum, the Abscam middlemen named at least 58 public officials as person who could be bribed. As to 25 of those 58 public officials, the middlemen made representations sufficiently specific to cause the FBI formally to approve arrangements for bribe meetings. Of the 27 meetings [6] that were approved, 20 acutally occurred. As to the 20 that occurred, the following results obtained:

At one meeting, the person who appeared was an actor pretending to be the named official.

At two other meetings, the middlemen admitted they had lied about having established beforehand that the officials would accept bribes for specific acts, and no bribe was offered, then or later.

At five other meetings, no bribe was paid, although bribes were later paid in connection with two of these.

As to one other meeting, the one attended by Kenneth MacDonald, there is substantial evidence that the target had been duped by the middleman, that the target was not there to receive a bribe, that the target never received any of the money given to the middleman.

As to one other meeting, money was transferred to the official under ambiguous circumstances; but he then sent a letter thanking the middleman for the legal retainer, and the official was not prosecuted.

Thus, 12 of the 20 public officals with whom meetings were held were convicted for their conduct at the meetings.

XI. CONCLUSION

As the foregoing summary suggests, much of the information in the FBI confidential files suggests that the Abscam investigation could practicably have been conducted with more effective supervision, management, and control at various levels of the FBI and of other components of the Department of Justice. Indeed, a comprehensive study of complex undercover operations, conducted by personnel in the FBI and in other components of the Department of Justice in 1980–1981, concluded that the experiences in Abscam and other operations suggested the desirability of several specific procedural innovations in future operations. A number of those suggestions were mentioned by former Deputy Assistant Attorney General Nathan when he testified before this Committee.

On the other hand, our review revealed no information that in our judgement, under the current state of the law, would have materially affected the critical factfinding process involved in any of the Abscam trials or due process hearings.

Finally, as stated at the outset, the purpose of this summary has been solely to provide the Committee at this point in the study with the factual information in the FBI confidential files most relevant to the tasks enumerated in Senate Resolution 350. The overarching policy questions and assessments with respect to Abscam in particular and undercover operations in general are matters to be addressed by the Committee in its final report.

[EXHIBIT 17]

U.S. DEPARTMENT OF JUSTICE,
FEDERAL BUREAU OF INVESTIGATION,
Washington, D.C., November 5, 1982.

Hon. CHARLES McC. MATHIAS, Jr.,
Chairman, Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, U.S. Senate, Washington, D.C.

DEAR CHAIRMAN MATHIAS: In the interest of assisting the Committee in achieving its objectives, my staff has reviewed the interim report based on your counsels' documentary review. It is requested that the Committee consider the comments which follow and incorporate this letter into the record.

The last paragraph on page five of the staff report states, "In fact, there is essentially no documentation prepared during the first several months of the Abscam operation or reflecting what occurred during that period."

The period of time, February, 1978, through May, 1978, was marked by preliminary investigation in which the original targets of Abscam were identified. The results of this investigation are set forth in the individual files of the original targets which have not been reviewed by the Counsel for the Committee, but these files are available for review upon request of the Committee. The Abscam files, both the Brooklyn-Queens field file and Headquarters file, were not opened and documents filed therein until May, 1978.

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[6] Approval of two of these 27 was withdrawn before it was ever communicated to the field.

On page six, in the first full paragraph, the staff report lists four objectives in the original Abscam undercover proposal. However, the May 26, 1978, undercover proposal lists a total of six objectives. In addition to the four listed in the staff report, this proposal also listed (5) recovery of stolen artifacts, and (6) establish contact with a confidence man on the West Coast. Objective number 5 is significant because two subjects were convicted for the theft of an art work valued at approxmately one million dollars and the painting was recovered.

The last paragraph on page six states, "There is no documentation in the original approval memoranda for Abscam reflecting any consideration by FBIHQ of paragraphs F-J of the Undercover Guidelines."

The Attorney General's Guidelines relative to undercover operations were not in effect when Abscam was initiated.

Paragraph F, Undercover Operation Review Committee, sets forth the requirement for review of certain undercover operations by this Committee. However, at the time of the submission of the original Abscam proposal, this Committee had not yet been created.

Paragraph H, Duration of Authorizations, provides that undercover operations shall not be approved for longer than a six-month period. If this requirement had been in effect, it would have been satisfied in the approval communicaiton to the New York Field Office, dated July 25, 1978.

The staff report, on page seven, the first paragraph of Section IV states "* * * and in August, 1979 an indefinite extension was granted."

In August, 1979, there was no consideration for extension of the previous six-month operating period which was to expire on September 30, 1979. However, by airtel dated September 4, 1979, the Brooklyn-Queens Office requested refunding authorization to the end of the calendar year, December 31, 1979. The additional funding and extension of operating time were recommended on September 18, 1979, by the Undercover Activities Review Committee. The Assistant Director, Criminal Investigative Division, noted his approval on the W. D. Gow to Mr. Mullen memorandum dated September 11, 1979.

On page 11, paragraph three, the staff report states, "the origin of the asylum scenario is equally unclear."

The FBI's position continues to be that the asylum scenario was originated by SA Anthony Amoroso on July 26, 1979, during a conversation with Angelo Errichetti. This action was totally spontaneous with no suggestion of whom should be contacted. It was Errichetti and Howard Criden who chose to utilize Congressmen and then proceeded to identify specific Congressmen.

SA Amoroso stated during a briefing for the Committee's Counsel in September, 1982, that the creation and implementation of this scenario may well have been influenced by his discussions with Melvin Weinberg, newspaper articles reporting expulsion of a foreign national from the United States and meetings with Alfred Carpentier and Alexander Alexandro regarding immigration matters.

It needs to be emphasized that the actions of SA Amoroso on July 26, 1979, did not then nor would they now require FBI Headquarters approval. Undercover personnel are educated, trained and experienced investigators who are expected to use good judgment and imagination when dealing with the subjects of an investigation. It is not desirable or practical for every action of an undercover Agent to be subject to the scrutiny and approval of FBI Headquarters. A degree of flexibility must be maintained for this investigative technique to succeed.

On page 13, paragraph three, the staff report lists three reasons for the termination of Abscam as set forth in W. D. Gow to Mr. Mullen memorandum dated January 10, 1980.

A fourth reason is contained in the January 10, 1980, memorandum. "Meetings with political figures and persons with political and organized crime influence will be completed by the above date."

On page 14, paragraph one, the staff report states "The documents also reflect no attempt by the FBI or other Department of Justice personnel to obtain extrinsic evidence of the reliability of the representations of any middleman—for example, the evidence of reliability that is required for law enforcement officers to obtain a search warrant on the basis of statements by an informant."

Holding a meeting and paying a bribe are two separate and distinct events. There is a legal requirement that an informant's report be corroborated before a magistrate can issue a search warrant. There is no legal requirement to corroborate the reresentations of a middleman before holding a meeting with a public official or paying him a bribe. Notwithstanding the absence of such a requirement, the FBI never paid a bribe to a public official in Abscam until the public official appeared at a meeting, the undercover Agent determined the public official was who he purported to be, the public official acknowledged that he knew the purpose of the meeting, the public official expressed a willingness to take money for an illegal purpose, and the public official acknowledged the receipt of the money.

Further, the FBI did attempt to assemble relevant information prior to the meetings with public officials. At FBI Headquarters, indices checks were conducted on all persons prior to their being offered a bribe. In addition, indices checks of various field office files generated information which was documented and communicated to FBI Headquarters on John Jenrette, Richard Kelly, Angelo Errichetti, Michael Myers, Raymond Lederer, George X. Schwartz, Harry P. Jannotti, Louis C. Johanson, and Howard Criden.

On page 15, paragraph one, the staff report states "The documents that were submitted to the decision-making officials at FBI Headquarters were incomplete and misleading."

In this regard, the staff report refers to a May 21, 1979, document submitted by the Miami Field Office requesting a $15,000 lump-sum payment for Melvin Weinberg because he was instrumental in the recovery of fraudulent securities. The May 21, 1979, document did not request but only supported the request of the Brooklyn-Queens Field Office which is set forth in a document dated May 14, 1979. This document cites Mr. Weinberg's involvement in the Kenneth MacDonald case as justification for the lump-sum payment. Thus, when these two documents were considered together as was the case, decision-making officials at FBI Headquarters were provided sufficient information to justify the payment.

In the first paragraph on page 16, the staff report states, "In late September, 1979, Abscam was designated as a "Bureau Special" operation. The documents do not reflect what precipitated this redesignation and the circumstances that warranted close Headquarters supervision over Abscam existed long before the Autumn of 1979."

The scale and sensitivity of an extensive undercover operation like Abscam multiply problems of coordination. In a typical operation, a single investigative office coordinates its activities with the office of a single prosecutorial agency. In a complex, multidistrict investigation, by contrast, several different investigative and prosecutorial offices are involved simultaneously in the covert phase of the investigation. Moreover, because of the sensitivity of the investigation and the particular problems generated by a multi-venue operation, high-level officials of the Department and the Bureau often become involved in such operations on a day-to-day basis. Thus, what is ordinarily a single faceted problem of coordination is magnified into a problem of at least six dimensions: (1) Among field offices of the Bureau; (2) between field offices and FBIHQ; (3) among FBI field offices and the United States Attorneys (USAs) or Strike Forces; (4) between FBIHQ and Washington based officials of the Department; (5) among USAs and Strike Forces; and (6) between prosecutors and the Department. It is fair to say that the administrative complexity of the operation poses a major obstacle to the efficient transmission of information, suggestions, and directions and the orderly sharing of responsibility. Thus, on September 24, 1979, Abscam was designated as a Bureau special to assist in eliminating such problems. No one incident was the cause of Abscam being made a Bureau special.

On page 16, paragraph two, the staff report states, "The documents do not reflect that the Special Agent-in-Charge who was Mr. Good's immediate superior participated in any meeting with Mr. Good or with the other Abscam Agents."

There is one FBI document which reflects that Mr. Good's immediate supervisor, the Assistant Special Agent-in-Charge of the Brooklyn-Queens Office, attended a conference on March 20, 1979. There are two additional documents which reflect that the Special Agent-in-Charge (SAC) of the Brooklyn-Queens Office attended two conferences on August 30, 1979, and December 21, 1979. These documents have been made available for review by Counsel for the Committee.

Additional evidence of the SAC's supervision may be found in the numerous communications from the Brooklyn-Queens Office, which this SAC reviewed and approved.

At the top of page 17 the staff report states, "We found no document reflecting a consideration of Weinberg's suitability as an informant under the Attorney General's FBI Guildelines for Use of Informants, which were then in effect; nor did we find any document reflecting what we were told by FBI officials: that Weinberg was closed down as in informant because the FBI discovered, during the pre-Abscam period, that he had been engaging in illegal activities while operating as an informant."

First, with respect to a document reflecting a consideration of Mr. Weinberg's suitability, the Informant Guidelines in effect during 1977, 1978, and 1979 did not require a separate document setting forth a determination of an individual's suitability to be an informant for the FBI.

There are two documents, dated April 6, 1976, and April 7, 1976, copies of which will be provided to the Committee, which contain information regarding Mr. Weinberg's illegal activities and the closing of his informant file.

On page 18, 19, 20 and 21, the staff report cites three additional examples of how Mr. Weinberg deceived Agents and prosecutors, and provides what it calls "substantial evidence" to support the conclusion that Mr. Weinberg shared in the bribe payoffs of Errichetti and MacDonald and his receipt of gifts from Errichetti.

The various allegations of wrongdoing by Melvin Weinberg have been the subject of lengthy and thorough judicial, prosecutorial, and investigative review. These allegations remain unproven, and the "substantial evidence" cited in the staff report remains unpersuasive.

On pages 20 and 21 the staff report states, "(c) A document in the FBI files shows that on October 20, 1979, Errichetti told an FBI informant that MacDonald would not and did not take any money from Errichetti."

There is a second conversation, on October 21, 1979, with this same cooperative witness and Errichetti in which Errichetti states, "They both got 15 G's on something else. Cold cash." The cooperative witness responds, "Lordi and Kenny [MacDonald]?," and Errichetti states, "And Pete. Each." The cooperative witness states, "All three of 'em?" to which Errichetti responds "Yeah."

In his due process decision of July 24, 1981, then U.S. District Court Judge George C. Pratt, Eastern District of New York, addressed the subject of Mr. Weinberg's alleged misconduct by stating, "First, as to the claimed misconduct by Weinberg, none of the instances, even if true, have any direct relationship to any protected right of these defendants. Except for the three expensive watches that Weinberg promptly turned over to the FBI, there is inconclusive evidence in the record about the gifts. The court is satisfied that Di Lorenzo, Errichetti's nephew, lied about the microwave oven. The other evidence of gifts is simply unpersuasive."

In Section VIII, page 25, the staff report states, ". . . government attorneys from New Jersey, Pennsylvania, and Washington, D.C., found it extremely difficult to obtain satisfactory cooperation from the FBI field agents in New York," and the report describes some of the problems experienced by these government attorneys.

As previously stated, the problems of coordination are multiplied in an undercover operation of the scale and sensitivity of Abscam which involved multijudicial districts. However, these problems seem less significant when compared with the multitude of simultaneous requests from the various prosecutors for tapes, transcripts, information and investigation that were promptly and completely satisfied. Final proof of this efficiency is not only documented in FBI files, but is also found in the various successful prosecutions.

On page 30, paragraph one, the staff report states, "The second purported selfish concern of the middlemen—the fear of jeopardizing an ongoing lucrative criminal relationship—suffers a critical weakness; namely, it cannot work if the middleman in issue has not established the predicated ongoing lucrative criminal relationship." The report cites William Eden, William Rosenberg, Joseph Silvestri, Eugene Cuizio, Stanley Weisz, John Stowe, Geroge Katz, Sandy Williams and Alex Feinberg as middlemen who had not established the ongoing lucrative criminal relationship.

There is documentation that some of these middlemen had established an ongoing lucrative criminal relationship prior to their introduction of a corrupt politician to Abdul representatives. On October 6, 1978, Rosenberg and Weinberg discussed illegâl transactions involving certificates of deposit in which Rosenberg fully expected receiving a sizeable commission. On September 12, 1979, Stanley Weisz and William Rosenberg discussed with SA Anthony Amoroso and Mr. Weinberg illegal gold certificate transactions. During October, 1978 John Stowe had telephone conversations with Melvin Weinberg in which Stowe claimed he was arranging to have certificates of deposit flown into the country to sell to Mr. Weinberg.

On page 32, the staff report cites, "* * * there is substantial evidence that Errichetti duped former Commissioner MacDonald and pocketed that bribe."

The March 31, 1979, videotape is powerful support for the conclusion that MacDonald was a willing participant in wrongdoing with Errichetti. There is additional evidence. In his interview on February 2, 1980, MacDonald admits observing Special Agent John McCarthy give Errichetti a briefcase that was opened and contained money. Further, evidence is found in Errichetti's statement to a cooperative witness on October 21, 1979, that MacDonald had received $15,000 from Errichetti on another matter.

I hope that these observations will be helpful to your inquiry.

Sincerely yours,

WILLIAM H. WEBSTER, *Director.*

[EXHIBIT 18]

U.S. DEPARTMENT OF JUSTICE,
OFFICE OF LEGISLATIVE AFFAIRS,
Washington, D.C., December 7, 1982.

Hon. CHARLES McC. MATHIAS,
Chairman, Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, U.S. Senate, Washington, D.C.

DEAR MR. CHAIRMAN: Most of the Report prepared by the Counsel to the Select Committee dealing with the confidential ABSCAM FBI files focuses on the FBI's handling of the early stages of the investigation, and its supervision and control of the agents and informants working on the case. The FBI has already responded to the Select Committee, pointing out those facts and conclusions with which it disagrees, and the Department of Justice does not wish to repeat these points. However, the Interim Report includes some discussion of the Department's role in overseeing ABSCAM. While the Department disagrees with some of this discussion, we will limit our remarks to the Interim Report's handling of the investigation and indictment of Camden, New Jersey Mayor Angelo Errichetti and New Jersey Casino Commissioner Kenneth MacDonald.

By far the most serious problem with the Report is its apparent assumption that MacDonald was not a conspirator with Angelo Errichetti but was somehow "duped" into extorting over $100,000 from a man MacDonald and Errichetti believed represented a casino investor. The Department of Justice takes serious exception to that conclusion. MacDonald had been indicted by a federal grand jury and was awaiting trial at the time of his death. We submit it is inappropriate for the Interim Report to conclude, based on a thoroughly corrupt co-defendant's disclaimers, that there is "substantial evidence" of MacDonald's innocence. It should be pointed out that both MacDonald and Errichetti had a considerable motive to deny MacDonald's involvement.

The Report emphasizes an FBI document reporting that on October 20, 1979, Errichetti told an informant that MacDonald did not receive any payoff money. However, undue focus on that conversation ignores the fact that the very next day Errichetti told the informant that he had paid off MacDonald. In any event, of course, whether the Department could obtain proof that Errichetti shared his payoff with MacDonald is not the issue; the crime charged was MacDonald's use of his public office to assist Errichetti to collect a bribe from people they thought were casino investors.

The Department limits its response to the Interim Report's treatment of the MacDonald investigation because it considers this portion of the Report to be seriously flawed by too heavy a reliance on one-sided evidence. We urge the Committee to reconsider its inferences and conclusions flowing from this aspect of the Report.

Sincerely,

ROBERT A. MCCONNELL,
Assistant Attorney General,
Office of Legislative Affairs.

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[37] Senator MATHIAS. Are there any questions of counsel?

Senator HUDDLESTON. Mr. Chairman, I would just reiterate what seemed to be my impression, and that is with the testimony that we have heard and with the documents that you have examined and with the testimony of Agent Amoroso in previous trials, it is still very vague as to just precisely when and how the Abscam investigation switched toward public officials, Congressman. Is that correct?

Mr. NEAL. That is correct. It is unclear whether this was a deliberate decision made first to go after politicians in general, such as in New Jersey, and then to go after Congressmen. It is unclear whether this is a deliberate decision, if deliberate, who made it and when, or whether it was simply Weinberg elaborating on the scenario, a garrulous, talkative man reaching out. It is unclear.

Senator HUDDLESTON. So, that has not been determined.

Was there anything in any of the documents relating to the question of press leaks toward the end and how it was that there were press reports prior to the individual defendant being aware of the investigation?

Mr. WHEELER. Yes, Senator. There were documents to that effect, and I guess they are really of two kinds. One group of documents constitute the contemporaneous documents in which officials both in the FBI and in the Department of Justice disseminated memoranda to essentially all personnel involved, [38] deploring the occurrence of these press leaks——

Senator HUDDLESTON. After they had occurred.

Mr. WHEELER. After they had occurred, and emphasizing the disastrous effect it had both in terms of fairness to the individuals involved and on the possible prosecutions of the ultimate defendants. There were documents before the publicized leaks occurred in which, after the termination date had been agreed upon, the FBI and the Department of Justice urged the participants, that is, the Government personnel to be very careful in terms of disseminating information. Obviously, that turned out not to be an effective admonition.

A third group of documents are documents showing that, as early as September 1979, the FBI and various U.S. attorneys offices were receiving telephone inquiries from news reporters saying things like: "We heard there is an investigation going on of a Senator in New Jersey; is that true?"

And then the fourth category of documents is really one document. That is the massive, thorough study done by former U.S. Attorney Blumenthal to try to trace the source of the leaks that did occur. As you probably know, he was unable to do that. The inquiry was not successful.

Mr. NEAL. Well, there is a sanitized version of the Blumenthal report that is in the public domain. The problem, I think, is that we have not been able to obtain the entire report. We have been told that at some point we may be able to [39] review that. But I think, when we do review it, at least we have been told that the real culprits of the real leaks have not been identified.

Senator HUDDLESTON. They are not identified. Thank you, Mr. Chairman.

Senator MATHIAS. Senator Rudman?

Senator RUDMAN. Mr. Chairman, I just want to comment briefly. First, let me commend our counsel for what I think is a very comprehensive summary in an evidentiary fashion of our 6 days of hearings and of their subsequent examination of records. It is a very good document to work from, and I think it will enhance the record.

It seems to me, in terms of where we go from here—and we are going to discuss a lot of that in our executive session, I am sure. The information contained in part 7 tied in with the information in part 10, which is entitled "The Use of Unwitting Middlemen as a Technique for Identifying Suspects and Establishing Reasonable

Suspicion"—Mr. Chairman, as you go through the evidence as we heard it and then you see it starkly presented in this way—and it has been very accurately presented by counsel—the fact of the matter is that, if there is a broad criticism, not in terms of investigations of the Congress but in terms of investigations generally of the citizenry of undercover operations, it is turning loose the kind of people that were turned loose by the FBI in this [40] particular case.

I think, No. 1, the incident which is well documented of Mr. Criden essentially going out in the countryside, making phone calls, which we were aware of some months ago, advised by our counsel, making phone calls around the country to acquaintances. I think there was one in Arizona, one in New Mexico, as I recall, and around the country, saying, "Do you happen to know a Congressman that I could talk to." I mean, when you think of the enormity of what these people are doing. Obviously, they are trying to make some money for themselves. It is easy to pick up a quick $5,000 or $10,000 skimmed off the top of a bribe.

I think that is a very serious accusation against the control that the FBI exercised.

Second, the statement repeated over and over again by FBI witnesses, that no bribe was to be offered unless there was corroboration, and they hold the Pressler case up as the example. I think that fails miserably on a whole number of counts contained here in section 10 and also, I believe, in section 7.

It seems to me, Mr. Chairman, that in terms of whatever guidelines the FBI will eventually adopt—and I for one do not think that this is anything that can be put into statutory form—we have got a real problem here with the kind of people that are being used. Out in the field notably, from my own [41] experience, you have to deal with some pretty unsavory folks when you are working on an undercover operation. But in this particular case, it seems to me, they were given free rein to roam the countryside without making any representations; and, if they did, they were totally uncorroborated.

It seems to me that those are the two areas that, if we can accomplish anything in these hearings with this committee, that is the area in which we can accomplish it.

Mr. NEAL. I might say, Mr. Chairman and members of the committee, we have identified some things that we think can be improved, should be improved. There are some intractable problems with undercover operations. Once you decide as a policy matter undercover operations are desirable, I think it is inevitable that you will have to some extent lack of control over informants like Weinberg. If you decide to use a Weinberg, you are not going to change his spots by paying him as an informant. He is going to try to scam the FBI. We think that Weinberg did on occasion in this case obtain Government funds improperly. We think on an occasion or two—there is substantial evidence that he obtained Government money improperly. We think there is substantial evidence that he shared at least in one or two of these bribes. But I guess that is almost inevitable. At least it is going to be tried any time you conduct an undercover operation with a man like Weinberg.

[42] The other problem, it seems to me—and Mr. Wheeler and I have been wrestling with this; we certainly want everybody to understand this is not any final report or anything like that. It is simply an effort to put in some coherent fashion what we found in the records, that is all. It should be coordinated with the public testimony.

One of the real problems if you decide to use a middleman and rely on a middleman, should you have reasonable indication of some sort aside from that middleman that the person you are going to bring in before hidden cameras will take a bribe, it seems to me there could be ways to do this. For example, you could probe the middleman. You could get detailed information on when he says he has met with the man, the circumstances of that. Certainly you must rely on the past, the accuracy of past information. But the more you think about this in terms of writing law or safeguards, it is a problem.

Senator MATHIAS. Senator DeConcini?

Senator DECONCINI. Mr. Chairman, I think our counsel pretty well summarized my feelings about it in his last statement. First, I agree with Senator Rudman. This is an excellent report. I am pleased to have it because, due to some pending legislation on the floor during a day and a half of our hearings, I missed all of them. It is very helpful to me. I do not know if you can really write any kind of rules and expect for someone like Weinberg or the FBI supervising [43] Weinberg to expect them to keep detailed logs. That kind of a person, I do not think, has ever kept detailed logs for himself or in his business or anything else. To expect that to happen, once you make the decision that you are going to use an informant rather than an undercover agent, it is very difficult, very difficult. I think you point that out very well. Obviously, there are errors and I think that corrective measures may be taken, but I think it is going to be very difficult for us sitting here in this glass house to try to pinpoint and direct how the Federal Bureau or any other law enforcement agency ought to demand or require certain specifics from an informant.

Mr. NEAL. The one thing that some people have suggested with respect to Abscam that makes sense and could make sense for the future is to insert an FBI undercover agent into place much earlier than was done in Abscam, not let a Weinberg, in effect, control the direction you take. Use a Weinberg as a cutting edge to get you in. But, once you are in, there is no reason an FBI undercover agent could not do what Weinberg is doing.

Senator DECONCINI. Of course, that is what they did here. Your point is perhaps sooner, looking at it now in the past, had they done that sooner they might not have had as many problems with Weinberg.

Mr. NEAL. And you do not have any such thing as a perfect [44] undercover operation. If the policy decision is made to allow law enforcement agencies to create opportunity for the commission of crime—and that is really the part of the undercover operation that gets very sensitive—then to write guidelines and to say, well, you allow the creation in this circumstance but not in that circumstance, it is going to be difficult. But we are going to bring you ideas that we may have for your consideration.

We are also in the process now of reviewing documents on other undercover operations, five or six of them. When we have reviewed the documents, we will recommend public testimony on other undercover operations totally aside from Abscam. And in executive session we hope to get some decisions from you on further steps on Abscam.

Senator RUDMAN. Mr. Chairman, if I may, I just want to address a question to counsel on that last point that he addressed to my friend from Arizona. This is simply this. In a classic sting operation, where, for instance, the FBI has set up an operation that has been known in the community to accept stolen property, a fencing operation, it is not difficult with law enforcement apparatus to get the word out in the proper part of the community that that exists. Then those people who have a proclivity to steal property will bring that property in and sell it to that sting operation. That is a classic operation used by State, local, and Federal authorities [45] for years.

I do not think that anyone could say that that kind of an undercover operation causes people to go out and steal because the outlet is available to sell it. There is always an outlet to sell it. This is just a more convenient one. This is quite different, it seems to me, in this particular case, where we are taking people who are corrupt themselves and letting them almost control the setting up of scenarios to create the opportunity for commission of a crime. I am not saying that you cannot do that. I expect you can and still protect people's civil liberties. But I believe, Mr. Chairman, that we ought to pay a lot of attention to what I think is the one Achilles' heel of this operation That is that in instances that are too numerour to mention, captioned here in the report and in other documents that I have seen where these middlemen, I think, exceeded any reasonable bound. If that middleman had not been a corrupt middleman but in fact had been an FBI employee, I believe that the laws would have been applied differently had that been the circumstance under the case law that exists on entrapment, procurement of felonies, and so forth.

I think this is a very important area for us to look at. I have no solutions to offer, but I think it is something that we really ought to ponder.

[46] Mr. NEAL. I might commend to the members if they have not seen it an editorial in the New York Times yesterday on the subject of what we are doing.

Senator MATHIAS. I would like to take this opportunity to express publicly what I have already expressed privately to our general counsel and our deputy counsel for the work that they have done, which is reflected in this report. In thanking them, I include their supporting staff, who have all worked very hard. I think this report, representing as it does a kind of summary of testimony and of a study of documentation, is the result of the investment of hundreds of hours. It is hard, dry work. There is not a lot of entertainment value in many of these documents, I appreciate the fact that they have been able to bring it to such a concise and comprehensive point.

Having said that to counsel, let me say to the committee that counsel have dealt us a serious blow in the last paragraph. It is clear they are not going to do all the work. They say the overarching policy question assessments with respect to Abscam in particular and undercover operations in general are matters to be addressed by the committee in its final report.

So, there is a lot of work still ahead for the committee in addressing the policy side of this whole matter.

One example comes to mind in the counsel's conclusion that there is no indication of targeting of specific individuals in **[**47**]** the Abscam operation before their names were mentioned by middlemen. I certainly would agree with that conclusion. But one of the concerns expressed in the Senate during the Williams debate, whether or not this might be a method by which the executive branch could interfere with the operation of the legislative branch. It was not so in this case, as far as the record discloses. But we now have a procedure that has been used. A precedent has been created.

Senator INOUYE. As Senator Rudman pointed out, although individual and specific Members of Congress were not targeted, Members of Congress as a group were targeted.

Senator MATHIAS. That is right. And then, as Senator Rudman also has pointed out, any member of the general public is exposed to this experience on the word of a corrupt middleman.

With all of the help we have received and which I acknowledge and with great appreciation today, there is a lot of work ahead of us.

Is there a motion that we then go into executive session?

Senator RUDMAN. I so move.

Senator DECONCINI. Second.

Senator MATHIAS. Moved and seconded that we go into executive session for the purpose of discussing various matters that are covered by rule 2 of the committee. Is there objection? If not, it is so ordered.

[48**]** I propose that we go to 357.

The meeting is closed.

[Whereupon, at 3:17 p.m., the public portion of the meeting was concluded.]

[1] REDACTED COPY OF EXECUTIVE SESSION HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

THURSDAY SEPTEMBER 9, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 357, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Huddleston, Leahy, and Inouye.

Staff present: Malcolm F. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

We are meeting today for the purpose of taking the testimony of Mr. William Rosenberg. Mr. Rosenberg, we are happy to have you with us this morning. As you are aware—or, I now wish to advise you—it is the rule of this committee that all testimony be taken under oath. So, if you will rise and raise your right hand, do you swear that all the testimony you are about to give to the committee will be the truth, the whole truth, and nothing but the truth, so help you God?

[2] Mr. ROSENBERG. Yes.

Senator MATHIAS. Mr. Rosenberg, have you received a copy of Senate Resolution 350?

Mr. ROSENBERG. Just here, yes, sir.

Senator MATHIAS. And have you received a copy of the committee's rules?

Mr. ROSENBERG. Yes, sir.

Senator MATHIAS. So you are advised of both of those matters.

If there is no objection on the part of the committee, I will ask counsel to proceed with questions.

Mr. WHEELER. Thank you, Mr. Chairman.

[3] TESTIMONY OF WILLIAM ROSENBERG

Mr. WHEELER. Mr. Rosenberg, will you please state for the record your full name and your address?

Mr. ROSENBERG. My name is William Rosenberg. My address is 80 Fir, F-i-r, Drive, Rosslyn, N.Y. 11576.

Mr. WHEELER. Mr. Rosenberg, what is your educational background after high school?

Mr. ROSENBERG. I am a college graduate. I have taught at college, in the economics field, and various associated fields. I did this at night. I have no further degrees than that.

Mr. WHEELER. Was your degree a bachelor of arts?

Mr. ROSENBERG. I think of business science.

Mr. WHEELER. Business science. From what university?

Mr. ROSENBERG. From the College of the City of New York.

Mr. WHEELER. What was your major?

Mr. ROSENBERG. Economics.

Mr. WHEELER. Did you take any courses in finance?

Mr. ROSENBERG. Oh, yes.

Mr. WHEELER. Courses in securities?

Mr. ROSENBERG. Oh, yes.

Mr. WHEELER. Any courses in business law?

Mr. ROSENBERG. Probably.

Mr. WHEELER. What was your employment history before 1978?

Mr. ROSENBERG. I spent a good deal of time on the [4] Exchange. I helped run a business called John Maher Associates. Prior to that, I worked for members of the New York Stock Exchange as a representative and a broker.

Mr. WHEELER. And in your capacity as a representative and broker, you dealt in various forms of securities?

Mr. ROSENBERG. Yes.

Mr. WHEELER. And you said that you taught. What kinds of courses did you teach?

Mr. ROSENBERG. I gave some courses in salesmanship, as I recall. Now, we are going back a few years——

Mr. WHEELER. I understand.

Mr. ROSENBERG. On general economics. At one point we actually created a new course on what was current in New York as a major industry, the garment industry, and we created our own book on what made up the garment industry and how to improve it.

Mr. WHEELER. During the time that you were a broker or a representative of brokerage houses, did you regularly read business magazines such as Forbes and Fortune?

Mr. ROSENBERG. Oh, yes.

Mr. WHEELER. And the Wall Street Journal?

Mr. ROSENBERG. Oh, yes.

Mr. WHEELER. Did you consider yourself familiar with various forms of securities that were available on the market?

Mr. ROSENBERG. Yes, sir.

[5] Mr. WHEELER. When did you first meet a gentleman named Bill Eden?

Mr. ROSENBERG. I would say about 1978. He was the brother of a mutual friend, and I was introduced to him at that time.

Mr. WHEELER. Was that early 1978?

Mr. ROSENBERG. I would say; 1978 or early 1977.

Mr. WHEELER. When did you first meet Dan Minsky?

Mr. ROSENBERG. At an introduction that Mr. Eden arranged for before a business which we were discussing was formed.

Mr. WHEELER. So that was also early 1978?

Mr. ROSENBERG. Yes, sir.

Mr. WHEELER. Incidentally, how do you spell Mr. Minsky's last name?

Mr. **Rosenberg**. I would think M-i-n-s-k-y.

Mr. **Wheeler**. When did you meet Max Krauss?

Mr. **Rosenberg**. At the same time. Mr. Eden arranged for a meeting for Mr. Max Krauss, Mr. Minsky and myself, with the thought in mind that they would join a company we were looking to organize to lease various appliances, commodities, and so on.

Mr. **Wheeler**. Do you know why Mr. Eden approached you?

Mr. **Rosenberg**. It just seemed comfortable, because I seemed to know my way around in the leasing business. I had a [6] little bit of experience with it, and I thought we could organize and get together on something worthwhile.

Mr. **Wheeler**. And did the four of you in fact form a business?

Mr. **Rosenberg**. Yes. We called it "Transcom East," T-r-a-n-s-c-o-m E-a-s-t.

Mr. **Wheeler**. Was that a corporation?

Mr. **Rosenberg**. No. It was just a business company, registered in the State of New York.

Mr. **Wheeler**. Was it a partnership?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Do you know a Mr. Tingle?

Mr. **Rosenberg**. Who?

Mr. **Wheeler**. Tingle, T-i-n-g-l-e.

Mr. **Rosenberg**. No, sir.

Mr. **Wheeler**. Have you ever heard that name?

Mr. **Rosenberg**. No, sir.

Mr. **Wheeler**. Did the Transcom organization that you formed with Mr. Eden, Mr. Minsky, and Mr. Krauss actually commence doing business?

Mr. **Rosenberg**. Yes. We started, I think, about March 1978, and each of us had a separate area in which we tried to work. Mr. Krauss seemed to be knowledgeable in products like cement, ships, and things of that kind. Mr. Minsky purported himself to be involved in various brokerage [7] activities to raise money for banks. Mr. Eden came out of the air-conditioning business and had had a little experience with leasing. And I had the background of coming out of the New York and over-the-counter stock exchange setup.

Mr. **Wheeler**. Now, when you say the business of leasing, exactly what were you trying to do?

Mr. **Rosenberg**. The simplest example I could give you would probably be what brought about the introduction of Mr. Errichetti into this affair and would best illustrate what we were doing.

Mr. Eden went to Camden to talk to Mr. Errichetti with reference to leasing a telephone system for the municipal buildings in Camden and arranging for an offshore crane. Since the municipality was not going to pay for this in cash, we would arrange for leasing, and they would pay so much a month. The crane was worth about $1.2 million and the telephone system about $800,000.

Mr. **Wheeler**. Were you simply acting in that capacity as a broker between——

Mr. **Rosenberg**. Oh, that is all, that is all we did.

Mr. **Wheeler**. All right. When was the first time you heard of Melvin Weinberg?

Mr. **Rosenberg**. In part of our leasing business, one of the firms we tried to represent was a company called General Instrument, who operated in Westbury, Long Island. [8] They made various kinds of computer machines like totalizers, which were used in racetracks, for example. These machines and others that they made sold for approximately $10 to $15 million each, and the best way to operate them was to lease them. And we tried to secure business on their behalf.

I would say early—late in 1977 or early in 1978, money was tightening up rather sharply among banks. Interest rates were going up is what I mean. I think the going rate—today, of course, it is a little ludicrous—but in those days, they were running as high as 8, 8½, and 9 percent. And this added a considerable amount to the leasing business. What took place was that a man who was sales manager said he had a cousin in Florida who knew where there was money available coming out of the Middle East. The man's name was Herman Weiss, and I think the name of a company that was started down there was H&R Real Estate—you know, this is 4 years ago, and I am a little vague, but I do recall these incidents—and he worked for a man by the name of Meltzer. Mr. Weiss said he had access to oil money, Arabian or Arab oil money, and if we would send down a program of what we were interested in and some $5,000 to start with, he would try to make arrangements for us to get some interest. I told him that we would not be interested in doing something like that; we did not have that kind of money to send down for these purposes. We discussed things for a few moments, and he said, "Well, I have a friend of mine [9] named Weinberg in New York who also has funds, and he may not ask for any down payment." He gave me the name of Mel Weinberg. An office was located in Holbrook, N.Y. The name of the company he was to represent was Abdul Industries. And I contacted him.

That was my first introduction to Mel Weinberg.

Mr. **Wheeler**. Was your conversation with Mr. Weiss a telephone conversation, or in person?

Mr. **Rosenberg**. Yes, oh, yes.

Mr. **Wheeler**. A telephone conversation?

Mr. **Rosenberg**. I called from New York; he was in Florida.

Mr. **Wheeler**. Had you ever talked to Mr. Weiss before?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. How did you get his name?

Mr. **Rosenberg**. Through Roy Student, who is the general sales manager of General Instrument.

Mr. **Wheeler**. Could you spell that person's name?

Mr. **Rosenberg**. S-t-u-d-e-n-t. Roy Student. I think he may still be there.

Mr. **Wheeler**. What did Mr. Student tell you about Mr. Weiss?

Mr. **Rosenberg**. Please? I did not quite catch that.

Mr. **Wheeler**. What did Mr. Student tell you about Mr. Weiss?

[10] Mr. **Rosenberg**. Mister who?

Mr. **Wheeler**. Mr. Weiss.

Mr. **Rosenberg**. No, no. I do not get the first name.

Mr. **Wheeler**. Mr. Student.

Mr. ROSENBERG. Oh, Mr. Student. Forgive me. Sorry. He said that he had access to Middle East money and might be a good source for us to raise funds to run our leasing business.

Mr. WHEELER. Did he suggest to you that Mr. Weiss had ever engaged in any illegal activity?

Mr. ROSENBERG. Oh, no. I knew nothing about it. We did not discuss it from that point of view. It was simply whether or not money would be available if a lease could be written on one of their machines; we would take over the paper and do the collecting from there on.

Mr. WHEELER. Did Mr. Weiss tell you that Mr. Weinberg had engaged in any illegal activity?

Mr. ROSENBERG. No. He merely said that he understood he had money available for just the kind of purposes I was looking for.

Mr. WHEELER. Did Mr. Weiss mention anything to you about offshore banks?

Mr. ROSENBERG. Mr. Weiss, no.

Mr. WHEELER. Did you talk to Mr. Meltzer at all before you met Mr. Weinberg?

[11] Mr. ROSENBERG. No.

Mr. WHEELER. Have you ever heard of a man named Fred Pro?

Mr. ROSENBERG. I think I read about him in the "Wall Street Journal" many years ago, but I didn't know him.

Mr. WHEELER. Did Mr. Weiss say anything to you about any discussions he may have had with Mr. Weinberg about corrupt politicians?

Mr. ROSENBERG. No, no; none whatsoever.

Mr. WHEELER. Did Mr. Weiss say anything about corrupt politicians?

Mr. ROSENBERG. No.

Mr. WHEELER. Before you met Mr. Weinberg, had you spoken to Mr. Minsky or Mr. Eden about corrupt politicians?

Mr. ROSENBERG. No.

Mr. WHEELER. Before you met Mr. Weinberg, had either Mr. Minsky or Mr. Eden told you that he had met Mr. Weinberg?

Mr. ROSENBERG. No.

Mr. WHEELER. Do you remember the date of your first meeting with Mr. Weinberg?

Mr. ROSENBERG. It would be hard to pinpoint it by exact date, but I would say sometime, August, September,

Mr. WHEELER. If I told you that we have a transcript of a conversation, a meeting between you and Mr. Weinberg, dated October 6, 1978, that appears to be the first meeting, [12] would that refresh your recollection?

Mr. ROSENBERG. It would depend on what was on that tape, because I met with Mr. Weinberg several times, August, September—I am saying August, but I am not sure—I will say surely, September, October, and there on.

Mr. WHEELER. Mr. Rosenberg, we have a transcript of a recorded conversation of a meeting between you and Mr. Weinberg also attended by Mr. Minsky, on October 6, 1978, which appears to be the first time that you met, and I say that because there is a point at which, very early in the conversation, Mr. Weinberg says, "Which one is Rosenberg?" and you say, "I am Rosenberg," and Weinberg says, "What is your first name?" and you answer, "Bill."

Mr. ROSENBERG. Then that is the date.

Mr. WHEELER. All right. Now, by the time you met Mr. Weinberg, then, on October 6, had anyone told you that he was interested in illegal or phony securities?

Mr. ROSENBERG. No.

Mr. WHEELER. Or certificates of deposit?

Mr. ROSENBERG. No, sir.

Mr. WHEELER. Had anyone told you that he was interested in offshore banks?

Mr. ROSENBERG. No, sir.

Mr. WHEELER. Did you know what offshore banks were?

Mr. ROSENBERG. Sure.

[13] **Mr. WHEELER.** What were they?

Mr. ROSENBERG. Most of them were merely business offices with telexes—is my surmise—to verify the fact that certain things were done at certain banks. Also, they were depositories, like the Cayman Islands or other places of that type, where people use for their deposits.

Mr. WHEELER. Was it your understanding that one of the principal purposes of offshore banks was to conduct illegal transactions?

Mr. ROSENBERG. Yes, I would say so.

Mr. WHEELER. All right. In this conversation, the meeting of October 6, Mr. Rosenberg, again, this is a recording of that conversation, and at the introductory portion, you say to Mr. Weinberg, "Everyone says for me to contact you. They say you have a need for some offshore—" and then it becomes inaudible.

Now, that suggests to me, Mr. Rosenberg, that at your first meeting with Mr. Weinberg, you had been told by someone that Mr. Weinberg was looking for offshore banks and fraudulent securities. Does that refresh your recollection?

Mr. ROSENBERG. No; it does not. My distinct recollections of that first meeting was that he was the one who brought up the desire for stolen securities and other instruments that would be utilized to bring money out of the Emirates; that they were required to replace assets which were on deposit in the [14] Emirates and to represent them.

Mr. WHEELER. Can you think of any reason why you might have said to him, "Everyone says for me to contact you. They say you have a need for some offshore—" something?

Mr. ROSENBERG. No, sir, I have no recollection of that.

Mr. WHEELER. And you still do not recall having said that?

Mr. ROSENBERG. No, sir.

Mr. WHEELER. Before that first meeting that you had with Mr. Weinberg on October 6, 1978, did Mr. Eden tell you that he had already talked with Mr. Weinberg?

Mr. ROSENBERG. No; he had not. I do not think he knew him.

Mr. WHEELER. Would it surprise you if I told you that we also have a recorded conversation of a conversation between Mr. Eden and Mr. Weinberg dated October 3, 1978, 3 days before your first meeting?

Mr. ROSENBERG. It would.

Mr. WHEELER. In that conversation, Mr. Eden and Mr. Weinberg discussed fraudulent securities. Would that surprise you?

Mr. ROSENBERG. I have no knowledge of that whatsoever.

Mr. WHEELER. Does it refresh your recollection?

Mr. ROSENBERG. As a matter of fact, it was I who brought Mr. Eden out to Holbrook after several conversations with Mr. [15] Weinberg, and principally to introduce him to where funds might be available for our leasing business and to take up some of the things which he was involved with at that time.

Mr. WHEELER. How many times did you talk with Mr. Weinberg on the telephone before you actually met him?

Mr. ROSENBERG. That would be hard to answer. I would say at least once or twice, but I do not even remember the second time.

Mr. WHEELER. Do you recall the substance of those conversations?

Mr. ROSENBERG. Oh, no. I can fill in just from what I would think such a conversation would hold. It would be that I had received his name from Mr. Weiss; we were interested in raising money for our leasing business, and I would like to meet with him.

Mr. WHEELER. Now, is it your testimony, Mr. Rosenberg, that at the October 6 meeting, your first meeting with Weinberg, it was Mr. Weinberg who first raised the topic of certificates of deposit and letters of credit; is that right?

Mr. ROSENBERG. That is correct.

Mr. WHEELER. When Mr. Weinberg first began to talk about certificates of deposit and letters of credit, did you understand he was talking about illegal transactions?

Mr. ROSENBERG. Yes, sir.

Mr. WHEELER. What did Weinberg say about those [16] transactions?

Mr. ROSENBERG. He said that if this type of instrument could be supplied to them, they would use them to withdraw money from the Emirates, and the amount that these instruments represented would be the amount they could withdraw.

Mr. WHEELER. And why was he telling you this? What role did he have in mind for you?

Mr. ROSENBERG. To secure them.

Mr. WHEELER. For you to secure those fraudulent securities?

Mr. ROSENBERG. Yes.

Mr. WHEELER. What did you tell him?

Mr. ROSENBERG. I said I would look into it and see what I could find out.

Mr. WHEELER. What was the inducement that he offered you?

Mr. ROSENBERG. Oh, there were two inducements. One was that 50 percent of any funds which were withdrawn via these instruments would be available to our leasing company, and the second was that we would personally receive a percentage of whatever the face value of these instruments were.

Mr. WHEELER. Had you ever engaged in any illegal transactions before.

Mr. ROSENBERG. Did I engage in any illegal transaction before—yes.

Mr. WHEELER. Did any of those transactions involve phony [17] certificates of deposit?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. Did any of them involve phony letters of credit?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. Why were you willing to engage in this particular transaction that Mr. Weinberg was asking you to engage in?

Mr. **Rosenberg**. Well, for one thing, I was in poor financial straits. I had not earned any money for quite a while. It was an opportunity for us—for me—to earn some good money in the leasing business if money could be supplied to do this leasing job, in addition to which there was money to be made, according to his rate of return to us on whatever we would supply him in illegal securities if they could be secured.

Mr. **Wheeler**. And that rate was 7 percent; is that right?

Mr. **Rosenberg**. It was 7 percent of the face value.

Mr. **Wheeler**. And what was the face value of the securities he was asking you to obtain?

Mr. **Rosenberg**. Eventually—we did not mention any figures to start with. It could have started with $100 million worth of securities, or $50 million worth of securities. That, I do not recall. It eventually got to the point where we would be supplying, for two Arab sheiks, approximately [18] $600 million for each one, so that $1.2 billion would be released.

Mr. **Wheeler**. And 7 percent of $1.2 billion was $84 million?

Mr. **Rosenberg**. That is correct.

Mr. **Wheeler**. So your understanding was that Mr. Weinberg was going to pay you $84 million for obtaining these fraudulent securities?

Mr. **Rosenberg**. Yes, sir.

Mr. **Wheeler**. Did that strike you as something that was unusual?

Mr. **Rosenberg**. Yes, sir, it was very unusual. He was to share in 50 percent of what we were to take.

Mr. **Wheeler**. Mr. Weinberg was?

Mr. **Rosenberg**. Yes. And my own impression was he was making something on the side, himself.

Mr. **Wheeler**. Did he begin by offering you 7 percent of the face value, or was that a negotiated figure?

Mr. **Rosenberg**. We did not negotiate at all. He simply said he had been paying that; that this was an ongoing thing to him, and that was the rate.

Mr. **Wheeler**. At that first meeting, what was your understanding of what it would take for you to be able to obtain these fraudulent securities?

Mr. **Rosenberg**. I was not sure. I did not know my way [19] around in letters of credit or certificates of deposit.

Mr. **Wheeler**. Mr. Minsky was with you at the time, wasn't he?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. What did Mr. Minsky say?

Mr. **Rosenberg**. He made no comment on that, either. He was not sure about just how to go about it, but he got very much interested in trying to work it out, eventually.

Mr. **Wheeler**. Would it refresh your recollection if I told you that at that first meeting, in the recorded conversation, Mr. Minsky said, after the discussion of certificates began, "I got two banks in the Virgin Islands. They ain't worth a plug nickel, but they can write paper. They can manufacture paper faster than you got hair on your head"?

Mr. **Rosenberg**. I do not remember.

Mr. **Wheeler**. You do not remember that. Does it refresh your recollection that Mr. Minsky did, in fact, know where to get fraudulent securities?

Mr. **Rosenberg**. Yes; I learned that afterward. We left, and he went about his business. He contacted some people whom I gather picked up the idea and submitted their own letters of credit and certificates of deposit.

Mr. **Wheeler**. Didn't Mr. Minsky, in fact, obtain some certificates of deposit himself?

Mr. **Rosenberg**. For us?

Mr. **Wheeler**. Yes.

[20] Mr. **Rosenberg**. No, not to my knowledge.

Mr. **Wheeler**. Mr. Rosenberg, you have in front of you, I believe, a copy of your testimony in the *Myers* due process trial before Judge Pratt in the Eastern District of New York.

Mr. **Rosenberg**. Yes, sir.

Mr. **Wheeler**. Would you please look at page 4,298.

Mr. **Rosenberg**. Did you say 98?

Mr. **Wheeler**. 4,298.

Mr. **Rosenberg**. Ninety-eight, yes.

Mr. **Wheeler**. Through page 4,300, and in particular at the very bottom of 4,298 through 4,299, let me read to you as follows. This is your testimony.

> When Weinberg first proposed these letters of credit and certificates of deposit and other instruments to me and Minsky was there, I knew nothing about where to get ahold of it at that time. I don't think Minsky did either, but he made contact with some people whose names I don't know and who got into the act and provided, as I was told, certificates of deposit and letters of credit or both, one or the other, in addition to the ones we had.

And when he flew—when Minsky and Eden flew down to Florida, they met these people on the plane.

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Did that refer to certificates of deposit and letters of credit that were provided by those people to [21] Minsky?

Mr. **Rosenberg**. No. I think it refers to letters of credit and certificates of deposit that they prepared for themselves on which they were to be paid.

Mr. **Wheeler**. Did Minsky tell you to name the names of the two banks in the Virgin Islands?

Mr. **Rosenberg**. No, I do not recall those at all.

Mr. **Wheeler**. Was there any discussion that you recall at your first meeting with Weinberg about getting the assistance or corrupt politicians?

Mr. **Rosenberg**. There may have been. I really cannot be very specific about it. If there are any references on tapes, the answer would be "Yes"; if there aren't any, the answer is "No." I do not recall.

Mr. **Wheeler**. Does the word "juice" mean anything to you with respect to politicians?

Mr. **Rosenberg**. No, but I had run across it before because it had been asked of me. If you are asking me do I understand what it means now, yes: before, no.

Mr. **Wheeler**. Do you recall that at that first meeting with Mr. Weinberg, Weinberg stated that he and the sheiks were interested in Atlantic City?

Mr. **Rosenberg**. I believe that was brought up.

Mr. **Wheeler**. And do you recall that he said that he "would be interested in your assistance in Atlantic City, [22] you can show me that you have got the 'juice' out there, as they call it," and that Minsky said, "I got the 'juice.' " Weinberg said, "If you can show me you got the 'juice,' we will back you up in Atlantic City."

Minsky asked, "All the way?"

Weinberg said, "All the way."

Minsky said, "For everything?'

Weinberg said, "I got you the 'juice.' If you can prove—let me tell you something about McCloud—he is not here—if you can show that you have the 'juice,' McCloud loves gambling."

Mr. **Rosenberg**. I think that was done, yes. I think that was said.

Mr. **Wheeler**. Did you know who Minsky was referring to when he said he had the "juice" in Atlantic City?

Mr. **Rosenberg**. Not at the moment, no.

Mr. **Wheeler**. Did Mr. Minsky tell you later on who he was referring to?

Mr. **Rosenberg**. No. I think when we got back to the office and discussed this whole program of what was available and where we might go with it, the name of Errichetti came up, and it was Eden who gave me that information, not Minsky. And if Minsky were informed about it prior to my knowledge, it would only be a matter of short time.

Mr. **Wheeler**. What information did Eden give you about [23] Errichetti?

Mr. **Rosenberg**. That he was a politician in Camden, the mayor of the town; he also served as senator of the State government and seemed to have his finger in all kinds of pies; worked on all kinds of arrangements wherever anything could be done. He not only was talking to Eden about a telephone setup, an offshore crane setup, but I think they discussed hopper cars which were for lease. I learned—-

Mr. **Wheeler**. "Hopper cars"?

Mr. **Rosenberg**. Hopper cars, railroad hopper cars, which were in short supply at the time. He also—I learned later, not at that initial meeting, but because I had gone along with Bill Eden, that in some fashion, he knew Guccione, who is the head of Penthouse Enterprises, I believe, and who were busy in Atlantic City—I learned all this later—taking over the Hilton Hotel and something called the Four Seasons, and joining them with a bridge and coming up with a new casino. And I knew later that Guccione had met with Eden, and I believe Minsky was with Eden at the time.

Mr. **Wheeler**. But now, let's go back to 1978 in early October 1978. Did Eden tell you that he knew that Errichetti was a corrupt politician?

Mr. **Rosenberg**. Yes; he mentioned that.

Mr. Wheeler. And did he tell you that, in fact, Errichetti had sought a kickback on the renting or the leasing of a [24] crane?

Mr. Rosenberg. Oh, sure.

Mr. Wheeler. So that, by the time you met with Mr. Weinberg, you knew that?

Mr. Rosenberg. No. I think it was coincidence that these things were almost parallel in time, and to the best of my recollection, they almost came out simultaneously, within a matter of a few days. If Eden told me about Errichetti, he could have told it to me the week earlier or at the time in which I brought up this matter of running into Weinberg and what might be available to us.

Mr. Wheeler. All right. Now, at the first meeting with Mr. Weinberg, you said that Mr. Weinberg asked you to try to obtain some phony CD's or letters of credit, which we will call "LC's."

Mr. Rosenberg. That is correct.

Mr. Wheeler. What did you do in response to that request?

Mr. Rosenberg. Well, I came back, discussed it with the folks in the office, and got in touch with a friend of mine who is an accountant, a Stanley Weisz. I mentioned that to him and told him what the purpose was.

Mr. Wheeler. Did you know that Mr. Weisz had previously engaged in illegal transactions?

Mr. Rosenberg. No. I did not know that, but I knew that [25] he was a sophisticated accountant, would know what letters of credit were, would know what certificates of deposit were, and if they could be obtained, what we might be able to do with them.

Mr. Wheeler. How long had you known Mr. Weisz?

Mr. Rosenberg. Oh, about 10 years.

Mr. Wheeler. Could it have been longer than that—15 or 20 years?

Mr. Rosenberg. Yes, It could.

Mr. Wheeler. And was he a friend of yours?

Mr. Rosenberg. Yes.

Mr. Wheeler. Did you feel at all uncomfortable asking Mr. Weisz about phony, illegal securities?

Mr. Rosenberg. Not the least bit.

Mr. Wheeler. Did you suspect that he had engaged in illegal transactions before?

Mr. Rosenberg. Yes.

Mr. Wheeler. Involving phony CD's?

Mr. Rosenberg. No, I would not say that.

Mr. Wheeler. Involving phony LC's?

Mr. Rosenberg. I would not know that, either.

Mr. Wheeler. Did you ask him whether he had?

Mr. Rosenberg. No.

Mr. Wheeler. But you told him that was what you were looking for?

[26] **Mr. Rosenberg.** Yes.

Mr. Wheeler. And he gave you Mr. Shaffron's name?

Mr. Rosenberg. Yes.

Mr. Wheeler. What did he tell you about Mr. Shaffron?

Mr. Rosenberg. Nothing, except that he knew him rather well and that he might be able to help.

Mr. WHEELER. He told you that Mr. Shaffron might be able to help provide illegal securities?

Mr. ROSENBERG. Yes.

Mr. WHEELER. And on that basis you called Mr. Shaffron?

Mr. ROSENBERG. And met him and received a copy of a letter of credit.

Mr. WHEELER. I take it before you met him, you told him over the telephone what you were looking for?

Mr. ROSENBERG. I would think so, I would think so—or else, simply that Mr. Weisz had asked me to call him, and I was looking for some information, and gave it to him directly rather than talk over the telephone.

Mr. WHEELER. Where did you meet Mr. Shaffron?

Mr. ROSENBERG. In an office of a law firm on Deer Park Avenue out on Long Island.

Mr. WHEELER. Do you remember the name of the firm?

Mr. ROSENBERG. No, I do not.

Mr. WHEELER. Were any of the attorneys present?

Mr. ROSENBERG. No; he simply used one of their offices. [27] I thought originally when I met him for the first time that these were part of his offices. I afterward learned that he had just used it as a convenience.

Mr. WHEELER. And that was where you met him for the first time?

Mr. ROSENBERG. That is when I met him for the first time.

Mr. WHEELER. And he had the letter of credit, the phony letter of credit?

Mr. ROSENBERG. He had one, he had one available, and he showed it to me and showed me what it is and marked it, "Sample", so it would not be used, and this was what I brought back to Weinberg.

Mr. WHEELER. Was it premarked "Sample," or did he mark it in front of you?

Mr. ROSENBERG. Oh, he marked it in front of me.

Mr. WHEELER. He wrote the word, "Sample," on it?

Mr. ROSENBERG. Yes.

Mr. WHEELER. And that is what you gave Mr. Weinberg?

Mr. ROSENBERG. Yes.

Mr. WHEELER. How much longer after the first meeting you had with Mr. Weinberg did you meet Mr. Shaffron?

Mr. ROSENBERG. I would say somewhere in about 2 weeks possibly 1 week, 2 weeks, within that range. I moved quickly if I could get something done.

Mr. WHEELER. What did Mr. Shaffron say to you about his [28] ability to get additional blanks of the fraudulent document?

Mr. ROSENBERG. He was not sure that he could. He told me how offshore responses were arranged for by Telex, that all you needed was somebody down there to OK the fact that a letter of credit that had been issued on bank A was OK, and a response, an inquiry, from a bank to the central office, and then back to them by Telex.

Mr. WHEELER. Did he tell you where he got this copy of the LC?

Mr. ROSENBERG. No, he did not.

Mr. WHEELER. Did you ask?

Mr. ROSENBERG. No.

Mr. **Wheeler**. Do you remember what bank it was drawn on?

Mr. **Rosenberg**. I do not.

Mr. **Wheeler**. Would it refresh your recollection if I asked you if it was the Merchant & Shipowner's Bank?

Mr. **Rosenberg**. That sounds familiar.

Mr. **Wheeler**. And it was a bank in the Virgin Islands?

Mr. **Rosenberg**. Yes; I think that is so.

Mr. **Wheeler**. Was it just a coincidence that the sample he gave you was from the Virgin Islands and that Mr. Minsky had said that he, Mr. Minsky, knew about two banks in the Virgin Islands that would make this kind of paper?

Mr. **Rosenberg**. I would think it was strictly a coincidence.

Mr. **Wheeler**. Do you have any understanding about whether [29] all or most of the offshore banks that exist that engage in this type of transaction are in the Virgin Islands?

Mr. **Rosenberg**. Please repeat that.

Mr. **Wheeler**. Do you have any understanding as to whether most of the banks that engage in these types of illegal transactions are located in the Virgin Islands?

Mr. **Rosenberg**. Oh, I have no idea.

Mr. **Wheeler**. How long after you got the sample letter of credit from Mr. Shaffron did you meet with Mr. Weinberg?

Mr. **Rosenberg**. I cannot be precise, but if it could have been done the next morning, it was done the next morning.

Mr. **Wheeler**. Incidentally, when you got that sample from Mr. Shaffron, did you also ask him for a sample of a certificate of deposit?

Mr. **Rosenberg**. Yes; I probably did, but he did not have any.

Mr. **Wheeler**. So then you met with Mr. Weinberg?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. And you showed him this sample?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Did you give it to him?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. You left it in his possession?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Why did you give the sample to Mr. Weinberg?

[30] Mr. **Rosenberg**. He asked me to. When I got a sample, he had to find out whether it was acceptable—with whom, I haven't the faintest idea—and he simply took it, and that was it.

By the way, when I gave him the sample, this was not done in his office. This was done at a diner.

Mr. **Wheeler**. The Blue Swan?

Mr. **Rosenberg**. The Blue Swan, about 4 miles north of where their offices were. In fact, any meetings that we had after one that we met with Errichetti at their office, I think most of them were at the Blue Swan. I got the impression that he did not want anybody in the office to know the type of activity he was developing with me.

Mr. **Wheeler**. Would it affect your opinion that you have just stated if I told you that in fact, Mr. Weinberg's conversations with you about these securities on October 6 had been recorded, and he knew they were being recorded?

Mr. **Rosenberg**. Did I know they were recorded?

Mr. **Wheeler**. No. What I am asking you is, if he knew that they were being recorded, would that affect your opinion that he did not want anyone else to know that he was engaging in this type of activity?

Mr. **Rosenberg**. Mr. Wheeler, it would not take that kind of information to have me suspect that he did not want people to know what he was doing, because we really met very privately in a diner, and sat at a table away from other people. So whether [31] you had told me that or not would really make no difference. I realized that something was amiss here with him, but exactly at that time, I did not know what. As a matter of fact, when I realized the kind of money we were talking about, and once I saw what these letters of credit were, and he detailed how they were to be filled out, when I realized how simple this thing was—really, a school kid who could type could do it—I insisted on knowing why he wanted other people to do this, or why he wanted me to do it. And he mentioned the fact that he was working for Arab people and of course, being Jewish, he was suspect. He also feared that if they ever found out that he was involved in taking any payoffs on this kind of thing and doing it himself, which he could have done without any trouble, he would fear for not only his job, but possibly his life, which made sense, and so I accepted it.

Mr. **Wheeler**. Did you ask him why he did not go to one of his friends to have them do this transaction instead of someone, a total stranger such as yourself?

Mr. **Rosenberg**. Well, going to a total stranger kind of made his job easier. We were people who were in the leasing business. We were people who could use funds, if he finally worked out what he had said he would, that we would receive these funds for this type of business. He had a fairly good package tied together for himself that made sense.

You also have to remember that when somebody waves that [32] kind of money around, even if you are not hungry—and we were hungry, and I was hungry—you are not inclined to be too critical. Your judgment—you know, you think maybe something is not quite right, but OK, you pass it by.

Mr. **Wheeler**. Did Mr. Weinberg strike you as a generous man?

Mr. **Rosenberg**. [Laughter.] No.

Mr. **Wheeler**. He did not?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. Would you have been willing to engage in this transaction for $10 million instead of $42 million?

Mr. **Rosenberg**. Sure.

Mr. **Wheeler**. How about $5 million?

Mr. **Rosenberg**. Fine. Half a million? Sure. Fifty thousand? Mr. Wheeler, I'll meet you when you wish. I do not mean to be funny, but if you have not been working for about 2 years and looking to try and support yourself, and you come up with an idea to start a leasing business—at one silly time during this business, I even put in a check—a chit, I should say—for about $320, ostensibly to cover some expenses. That is how tight it was. So you are talking about telephone numbers that really have no significance. They sound bizarre. You are dealing with newspaper figures; $100 billion worth of oil was imported into the United States in those times. It represents about 1 percent.

[33] Mr. **Wheeler**. Well, Mr. Rosenberg, you said that Mr. Weinberg—and you suggested very clearly—did not strike you as a generous man.

Mr. **Rosenberg**. No.

Mr. **Wheeler**. Here you are, a total stranger, and instead of beginning the negotiations at $500,000, he starts off the bat by offering you $42 million.

Mr. **Rosenberg**. Oh, no, he did not do that. He started at about $100 million for seven, and I was the one who brought it up. I figured what the heck, if you can do it for $100 million, you can do it for $300 million, and he said, "How about six?"

Mr. **Wheeler**. Even at $100 million, he is offering you seven?

Mr. **Rosenberg**. Yes. It's a lot of money.

Mr. **Wheeler**. All right. You left this sample with Mr. Weinberg, the sample of the letter of credit?

Mr. **Rosenberg**. Yes, sir.

Mr. **Wheeler**. What happened next with respect to that document?

Mr. **Rosenberg**. Our next meeting, which was, I do not know, a week later, perhaps, he came back and met me at the diner with letters of credit printed and wrapped in brown paper, and certificates of deposit wrapped the same way.

Mr. **Wheeler**. You had not talked to him in between those two events?

Mr. **Rosenberg**. Oh, I probably did. I have no [34] recollection of talking to him about anything.

Mr. **Wheeler**. Well, you said that he said he had to take that document and get it approved.

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Did he ever call you to tell you that he had gotten it approved?

Mr. **Rosenberg**. I probably was on his tail to find out, and probably initiated all the calls that took place to make sure that he got it approved so we could go to work.

Mr. **Wheeler**. Well, how did it come about that Mr. Weinberg was the one who actually produced the additional copies?

Mr. **Rosenberg**. He said he had a friend who was a printer, as I recall, and he would take care of duplicating this.

Mr. **Wheeler**. So this conversation occurred between the time you gave him the sample and the time that he came back to you with the brown paper packages?

Mr. **Rosenberg**. Yes, either on the phone or at that meeting at the Blue Swan, when I handed it to him.

Mr. **Wheeler**. But originally, on the October 6 meeting, the first meeting, he had asked you and Mr. Minsky to provide securities.

Mr. **Rosenberg**. Yes, yes.

Mr. **Wheeler**. What changed his mind?

Mr. **Rosenberg**. I do not know. And there was another [35] element there that was modified by him. There was a necessity to set up a receiving station wherever, that any requests from the Emirates as to whether these were valid or not had to be confirmed by Telex. This, too, was dropped.

Mr. **Wheeler**. Did you discuss the change with him as to who was to get the actual securities?

Mr. **Rosenberg**. No; I did not. I was not too anxious to upset anything. I was just very anxious to get this thing underway.

Mr. **Wheeler**. Now, he provided you, you said, at this second meeting with two packages, one of letters of credit and one of certificates of deposit?

Mr. **Rosenberg**. Yes, sir.

Mr. **Wheeler**. Were those both on the same bank?

Mr. **Rosenberg**. I do not remember. I would really have to see them. I gave the U.S. attorneys whatever copies I had left, so I really could not tell you.

Mr. **Wheeler**. Whatever copies you had left?

Mr. **Rosenberg**. Yes. What took place—several things are coming back to my mind that I recall. I remember the certificates of deposit were kind of small, square things that had an engraving around them. In fact, he removed a copper plate from the package, which he said he had to arrange for in order to engrave this.

The letters of credit were on white bond paper, printed, **[36]** and full size, you know, 8 by 11, or whatever it is. When he gave me both packages, they contained enough in the letters of credit to make up approximately 600 copies which would have represented $600 million worth of letters of credit. When these were typed initially, the two people we had typing them at our office made a few errors, and we were therefore short, as I recall, oh, about 7 or 8 copies. We duplicated them on a Savin business machine, or Xerox, or that type of thing, that we had there, to make up the additional amounts. Incidentally, they were all stamped with a number, so I knew that the number would be exactly $600 million or 600 pieces, and so on, and the same with the certificates of deposit. There were more of the certificates than there were of the letters of credit, so we did not run short of those, as I recall.

Afterward—and I am ahead of myself simply to illustrate this point—afterward, when he picked these up, I mentioned to him specifically that we had duplicated seven or eight of these letters of credit, and he said they would not do. And he met me later that week and replaced them with additional copies. And we made up these seven or eight copies subsequently, and I delivered those to him again.

Mr. **Wheeler**. All right, Mr. Rosenberg. Going back to the meeting at which he handed you the two brown paper packages, did you open the packages at that point?

[37] Mr. **Rosenberg**. No.

Mr. **Wheeler**. When did you open them?

Mr. **Rosenberg**. When I got back to my office.

Mr. **Wheeler**. Did he tell you at that meeting what was in the packages?

Mr. **Rosenberg**. Oh, yes.

Mr. **Wheeler**. What did he tell you?

Mr. **Rosenberg**. That the large ones were the letters of credit, and the smaller ones were the certificates of deposit.

Mr. **Wheeler**. Did he tell you how many there were of each?

Mr. **Rosenberg**. No. We knew how many we were going to make, and I just assumed they were all right. As a matter of fact, I did get a look at the certificate of deposit, because he removed that copper plate from the package.

Mr. **Wheeler**. Now, you say there were 600 copies of the letters of credit?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Did you count those out?

Mr. **Rosenberg**. Well, I did subsequently, when we ran them through the typewriters.

Mr. **Wheeler**. And you said it was for $600 million?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. So that each of the 600 was for $1 million?

Mr. **Rosenberg**. Yes. I should add to you that he told us **[**38**]** how to fill these out during that session.

Mr. **Wheeler**. When you say he told you how to fill them out, was the denomination already on it?

Mr. **Rosenberg**. The denomination, the rate of interest, the name of the sheik, and with the $600 million of the letters of credit, $300 million went to one, and $300 million went to the other, the same to be repeated with the certificates of deposit.

Mr. **Wheeler**. But was the denomination of $1 million already on the letters of credit when he gave them to you?

Mr. **Rosenberg**. Oh, no, no, no. We typed that in.

Mr. **Wheeler**. You typed that in. What about on the certificates of deposit?

Mr. **Rosenberg**. The same thing. We typed in the names, the interest rate, and the amount.

Mr. **Wheeler**. What was the denomination?

Mr. **Rosenberg**. $1 million.

Mr. **Wheeler**. And 600 of them?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Did he tell you that was the quantity he wanted at that meeting?

Mr. **Rosenberg**. Yes. That is what we eventually worked out.

Mr. **Wheeler**. At the second meeting?

Mr. **Rosenberg**. When he handed me these papers, and we **[**39**]** worked out the amounts to be done for each sheik, with their proper names.

Mr. **Wheeler**. He gave you all that information at the second meeting when he gave you the packages?

Mr. **Rosenberg**. I would say so. You know, this is the kind of detail that I just do not—I cannot pinpoint it for you that way.

Mr. **Wheeler**. And pursuant to those instructions, did you in fact make 600 copies—or fill in—600 LC's and fill in 600 CD's?

Mr. **Rosenberg**. Yes, we did.

Mr. **Wheeler**. In the amount of $1 million each?

Mr. **Rosenberg**. Yes, sir.

Mr. **Wheeler**. Mr. Rosenberg, would it refresh your recollection if I told you that you had a conversation, or there is a recording of a conversation, between you and Mr. Weinberg, a telephone conversation dated October 25, 1978, and I am going to read to you a portion of this transcript:

> Mr. **Rosenberg**. How are you?
> Mr. **Weinberg**. Fine. I am sorry I got back to you so late. I just got back in.
> Mr. **Rosenberg**. Everything okay?

Mr. **Weinberg**. Everything is fine.
Mr. **Rosenberg**. Oh, I am glad to hear that.
Mr. **Weinberg**. Why? Is something wrong?
[40] Mr. **Rosenberg**. No, no, no. Nothing is wrong. Everything is going well.
Mr. **Weinberg**. Everything is fine, couldn't be better?
Mr. **Rosenberg**. Let me tell you what I worked out.
Mr. **Weinberg**. Go ahead.
Mr. **Rosenberg**. Is it all right to talk?
Mr. **Weinberg**. Yes.
Mr. **Rosenberg**. The name on the LCs, and on the CDs, I used the name of the bank.
Mr. **Weinberg**. Of the bank? Now, when you say "the name of the bank"——
Mr. **Rosenberg**. The bank to whom this is made to.
Mr. **Weinberg**. Well, it is made out to his name, right?
Mr. **Rosenberg**. Yup, and I have to have it——

And then it is inaudible.

Mr. **Weinberg**. Well, couldn't we leave them blank?
Mr. **Rosenberg**. Everything can be left blank, as you wish, but I just had to know how to make it out.
Mr. **Weinberg**. You make it out to his name; as long as it is signed. Let us fill them in as we go along on them.
Mr. **Rosenberg**. Okay. Now, can I use one sheet, or do you need it broken up the other way?
Mr. **Weinberg**. I prefer half-and-half.
Mr. **Rosenberg**. Half CDs and half LCs, or half a million?
Mr. **Weinberg**. Half a million and a million. That's [41] $500,000 and one million.
Mr. **Rosenberg**. Okay, now.

And Mr. Rosenberg, the exhibits that are in the possession of the FBI and the Justice Department include LC's in two denominations, $1 million denominations and $500,000 denominations, and the certificates of deposit are also divided into $1 million denominations and $500,000 denominations.

Mr. **Rosenberg**. I didn't recall that at all.

Mr. **Wheeler**. That does not refresh your recollection?

Mr. **Rosenberg**. I said, I did not recall that at all. I thought they were all in million dollar——

Mr. **Wheeler**. Do you now recall it differently?

Mr. **Rosenberg**. No, but I certainly agree with what you are saying.

Mr. **Wheeler**. Do you recall the conversation that I just read to you?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. You do not recall that Mr. Weinberg, in fact, changed the numbers in terms of how many of each he wanted?

Mr. **Rosenberg**. No, sir, I do not.

Mr. **Wheeler**. Do you recall that there came a time when he asked you to increase the number of documents that you produced?

Mr. **Rosenberg**. I do not recall that. To the best of my [42] recollection, we had an agreed-upon number which we then executed. This surprises me to some degree because I had no recollection that some of them were done in half million dollar amounts

Mr. **Wheeler**. We have a recording, Mr. Rosenberg, of a conversation between you and Mr. Weinberg on October 30 or 31, 1978, in which the conversation goes as follows:

Rosenberg. If I can't get all this information and all this paper together, I will have to do something with you up here on it, in order to complete it.
Weinberg. I can always arrange to take it down myself for you.
Rosenberg. All right, then, and as long as there won't be any, uh——

> **Weinberg.** Nah.
> **Rosenberg.** Now, you know that I have doubled the rate. I will have——
> **Weinberg.** Six, I know, 600.

Does that refresh your recollection?

Mr. **Rosenberg.** Yes, it does. There must have been, in our first conversation, an initial arrangement to make it at $300 million, and then we simply doubled it to make it $600 million.

Mr. **Wheeler.** Well, you could not double it without producing them yourself, could you, Mr. Rosenberg?

[43] Mr. **Rosenberg.** If they had not been entered, why not?

Mr. **Wheeler.** Excuse me?

Mr. **Rosenberg.** If they had not been entered, why not?

Mr. **Wheeler.** In other words, Mr. Weinberg gave you more pieces of paper in the beginning than you really needed?

Mr. **Rosenberg.** Probably. Sure. I never counted the amounts. I know when I ran short of them, but I never counted the amount, and I know that I never ran short of the certificates of deposit, so we obviously had enough to cover.

Mr. **Wheeler.** Your testimony now is that you did not count out the number of pieces of paper.

Mr. **Rosenberg.** Not until after they were produced. I did not count them out initially.

Mr. **Wheeler.** When you got back to your office?

Mr. **Rosenberg.** No. What I did was, we used a stamp on them, and when we got to 600, I knew that was the completion of one for the letters of credit and the others for the certificates of deposit. And that is how I knew we were short, because we did not come up to 600. Several of them had been spoiled.

Mr. **Wheeler.** Is your recollection now refreshed on the denominations that Mr. Weinberg initially asked you to use?

Mr. **Rosenberg.** Yes.

Mr. **Wheeler.** And what is your recollection now?

Mr. **Rosenberg.** My recollection was we were starting [44] with $300 million on each, and we doubled it.

Mr. **Wheeler.** But what denomination on each of the pieces of paper?

Mr. **Rosenberg.** I am reasonably sure we were working with $1 million on each.

Mr. **Wheeler.** But you ultimately ended up using $500,000 on some and $1 million on others?

Mr. **Rosenberg.** OK, if that is what we did, but I do not recall it.

Mr. **Wheeler.** In that same conversation on October 26 that I referred to a moment ago, Mr. Rosenberg, there came a point when you said to Mr. Weinberg,

> I want to get the stuff in properly. I am working on CD's or LC's.
> **Weinberg.** Right.
> **Rosenberg.** On those LC's, they want them made out. They—they are really making it complicated.

Who were you referring to when you said that "They want them made out. They are really making it complicated"?

Mr. **Rosenberg.** I have no awareness of what you are referring to.

Mr. **Wheeler**. Does that refresh your recollection that perhaps someone else was making out the documents, other than Mr. Weinberg?

Mr. **Rosenberg**. No, sir.

Mr. **Wheeler**. Did you ever ask Mr. Minsky who he had in [45] mind when he told Mr. Weinberg on October 6 that he knew someone who could manufacture paper like the hair on his head?

Mr. **Rosenberg**. I am sure I did.

Mr. **Wheeler**. And what did Mr. Minsky say?

Mr. **Rosenberg**. He may have mentioned some name, but I have no recollection.

Mr. **Wheeler**. Did Mr. Minsky ever try to contact that person?

Mr. **Rosenberg**. I think he went out to see him.

Mr. **Wheeler**. And what happened?

Mr. **Rosenberg**. I subsequently learned that they had arranged for these for themselves and taken care of it, and that is the last I knew of it until they met them going down by plane, which I learned about after they had come back and we had picked them up, when they had come back from Florida.

Mr. **Wheeler**. When did you—I take it ultimately, Mr. Rosenberg, you finished filling in the certificates of deposit and the letters of credit?

Mr. **Rosenberg**. When did we finish them?

Mr. **Wheeler**. Yes.

Mr. **Rosenberg**. I do not know the exact date. Sometime in the latter part of that month. I had a man and a young girl do the typing, and I am only presuming that some of these things were changed because there was so much typing to be [46] done. And I think we spent a Saturday and a Sunday asking these two people to come in and do the typing.

Mr. **Wheeler**. What is the name of the man and the name of the girl who did the typing?

Mr. **Rosenberg**. The man's name was "Al". He was the manager for Mr. Eden's air-conditioning company.

Mr. **Wheeler**. What was the name of that company?

Mr. **Rosenberg** [pause]. Ellen Air—no. I do not recall.

Mr. **Wheeler**. Do you remember Al's last name?

Mr. **Rosenberg**. No.

Mr. **Wheeler**. Do you know if he is still alive?

Mr. **Rosenberg**. Al?

Mr. **Wheeler**. Yes.

Mr. **Rosenberg**. I have not seen him since they finished that typing, and we broke up that business a month or two later.

Mr. **Wheeler**. Who was the girl?

Mr. **Rosenberg**. She was the girlfriend of Mr. Eden's son.

Mr. **Wheeler**. What was her name?

Mr. **Rosenberg**. I do not recall.

Mr. **Wheeler**. Who brought them in—Mr. Eden?

Mr. **Rosenberg**. Mr. Eden.

Mr. **Wheeler**. Did they know they were engaging in illegal [47] activity?

Mr. **Rosenberg**. I do not know if they thought anything of what they were doing or not. We paid them about $100 for their time, so

I guess that was satisfactory as far as they were concerned. They never asked me any questions.

Mr. **Wheeler**. Did you ultimately return the certificates of deposit and letters of credit to Mr. Weinberg?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. Filled out?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. How long after they were filled out did you return them to Mr. Weinberg?

Mr. **Rosenberg**. I am just going to repeat what I said before. If it could have been done the next day, on that Monday, I returned them on that Monday if we finished them on Sunday. I was a hurry to get them back to him.

Mr. **Wheeler**. Where did you give them to him?

Mr. **Rosenberg**. We met at a diner called Sleepy Hollow. It is on Route 110, just north of the Long Island Expressway in Long Island. The arrangements were for us to secure two attache cases with locks. Mr. Eden and I went over to Macy's on Saturday and bought them. Each of these attache cases was to hold one sheik's letters of credit and certificates of deposit, and the other, the other fellow's. The idea was that I was to drive into this parking lot, leave them in my car; **[**48**]** he would come into the parking lot; we would meet in the diner, he would confirm the fact that I had them in the car. I saw through the window that he went out and picked them up and moved them into his van, and that was the way they were picked up. The idea, of course, was that I did not give it to him; therefore, I coud not be responsible for this thing.

Mr. **Wheeler**. Do you recall whether the date that that occurred was October 30, 1978?

Mr. **Rosenberg**. I do not know. I really do not know those dates or that time. I mean, I cannot be that precise.

Mr. **Wheeler**. Do you recall that there came a meeting in November 1978, and specifically, on November 16, 1978, when you again met with Mr. Weinberg, and the subject of Angelo Errichetti came up?

Mr. **Rosenberg**. And the subject of what came up?

Mr. **Wheeler**. Angelo Errichetti, the mayor.

Mr. **Wheeler**. I do not know about the time, but I am sure something—we discussed him several times.

Mr. **Wheeler**. With Mr. Weinberg?

Mr. **Rosenberg**. Yes.

Mr. **Wheeler**. OK. Do you recall whether you conveyed these securities to Mr. Weinberg before the meeting when Mr. Errichetti's name first came up?

Mr. **Rosenberg**. My recollection was that we met with Mr. Errichetti in December in Holbrook——

[49**]** Mr. **Wheeler**. That is right, but I am talking about——

Mr. **Rosenberg**. And then, if I completed and turned those certificates over on October 30, it would have been prior to that.

Mr. **Wheeler**. I am asking you for your recollection. Do you recall—well, let's start there, Mr. Rosenberg—do you recall that you turned the securities over to Mr. Weinberg before you and Mr. Weinberg met with Mr. Errichetti?

Mr. ROSENBERG. I do not recall exactly; I really do not. It seems to me like we completed one task before we picked up the other. By the way, I should add, if you are ready to leave this certificate of deposit thing, that Mr. Weinberg borrowed $1,500 from me to go down south. He was going to take these down to Florida and then process them from there to London and to the Emirates and so on.

Mr. WHEELER. When you turned those securities over to Mr. Weinberg at the Sleepy Hollow Diner, was it the full $1.2 billion?

Mr. ROSENBERG. No. They were short about seven or eight. And then he gave me the additional forms, I filled those out, and I gave him the balance.

Mr. WHEELER. When did he give you the additional forms?

Mr. ROSENBERG. I would think within a matter of days after I had told him about it.

Mr. WHEELER. When did you give them back to him?

[50] Mr. ROSENBERG. Shortly after that, soon as I could have them typed up.

Mr. WHEELER. But except for those seven or eight that were not done properly, you gave him the $1.2 billion at one time?

Mr. ROSENBERG. Yes.

Mr. WHEELER. Did there come another time after that when you gave—let me back up. Other than the $1.2 billion that you gave him, let us say, on or about October 30, 1978, before that date, did you give Mr. Weinberg any other fraudulent securities?

Mr. ROSENBERG. Not to the best of my recollection.

Mr. WHEELER. Do you know whether Mr. Minsky or Mr. Eden gave Mr. Weinberg any other fraudulent securities before that date?

Mr. ROSENBERG. That, I would not know. They never mentioned it to me.

Mr. WHEELER. OK. You are not aware of any that they did?

Mr. ROSENBERG. No, I am not.

Mr. WHEELER. Did you trust Mr. Eden and Mr. Minsky?

Mr. ROSENBERG. I trusted Mr. Eden. I thought Mr. Minsky was a damn fool after I got to know him.

Mr. WHEELER. Did you ever come to find out that Mr. Minsky or Mr. Eden had given Mr. Weinberg other fraudulent **[51]** securities?

Mr. ROSENBERG. No.

Mr. WHEELER. All right. After that first transaction when you gave Mr. Weinberg the $1.2 billion on or about October 30, did there ever come a time when you gave Mr. Weinberg other fraudulent securities?

Mr. ROSENBERG. No.

Mr. WHEELER. You never gave Mr. Weinberg any securities drawn on the Citibank?

Mr. ROSENBERG. Oh, yes, I gave him a sample of one.

Mr. WHEELER. When did you give him the sample on the Citibank?

Mr. ROSENBERG. I cannot give you a date on it, but I had secured one for him. He wanted to see one, and I got it for him.

Mr. WHEELER. How about a security drawn on the First National Bank of Tehran?

Mr. ROSENBERG. I have no recollection of that.

Mr. WHEELER. One way or the other—in other words, you do not know if you did; you might have?

Mr. ROSENBERG. I have no recollection at all of anything like that. I recall that initial sample of a certificate from Citibank or whatever it was, Chemical Bank or whatever it was, Chemical Bank or whatever, but I do not recall the Tehran thing.

[52] Mr. WHEELER. You mentioned the Chemical Bank. Did you also give him a sample drawn on the Chemical Bank?

Mr. ROSENBERG. I think I only gave him one additional sample that he requested, one or the other bank.

Mr. WHEELER. Did he request it from a specific bank?

Mr. ROSENBERG. He did. I think he wanted to get one from Citibank.

Mr. WHEELER. Was this in the same period of time, in October or November 1978?

Mr. ROSENBERG. I think so. It makes sense.

Mr. WHEELER. How did you get the sample?

Mr. ROSENBERG. I went to Mr. Weisz, and I said, "These folks want to see a sample of what Citibank does." He had an account in Smithtown. He said, "Go over and see the manager. Tell him that I sent you, and see if he will give you a certificate." And I got it.

Mr. WHEELER. That was Mr. Herman Weiss or Stanley Weisz?

Mr. ROSENBERG. Stanley Weisz.

Mr. WHEELER. Mr. Stanley Weisz. And was the document given to you marked, "Sample"?

Mr. ROSENBERG. I do not think so. I do not recall that.

Mr. WHEELER. It was a blank?

Mr. ROSENBERG. Yes.

Mr. WHEELER. And the bank manager gave you a blank [53] certificate?

Mr. ROSENBERG. That is right.

Mr. WHEELER. And your recollection is that it was only the one blank?

Mr. ROSENBERG. Yes, yes.

Mr. WHEELER. Did Mr. Errichetti ever give you any certificates of deposit, blank or otherwise?

Mr. ROSENBERG. No.

Mr. WHEELER. Any letters of credit?

Mr. ROSENBERG. No.

Mr. WHEELER. Did you ever give Mr. Errichetti any letters of credit or certificates of deposit?

Mr. ROSENBERG. No; I did not.

Mr. WHEELER. Blank samples?

Mr. ROSENBERG. No.

Mr. WHEELER. Would it surprise you, Mr. Rosenberg, if I told you that in March 1979, an FBI agent wrote a report stating that you had given Mr. Weinberg samples of certificates of deposit, one on the Citibank, one on the First National Bank of Tehran, and one on the Chemical Bank?

Mr. ROSENBERG. Yes; it would.

Mr. WHEELER. And would you say that is false?

Mr. ROSENBERG. I would say it is not accurate.

Mr. WHEELER. Did there ever come a time, Mr. Rosenberg, when Mr. Minsky and Mr. Eden were supposed to go to Florida to [54] meet with Mr. Weinberg regarding certificates of deposit and letters of credit?

Mr. ROSENBERG. Yes, yes. They were supposed to go down and collect the first payment of our funds coming in.

Mr. WHEELER. When was that?

Mr. ROSENBERG. I think it was in February.

Mr. WHEELER. Of 1979?

Mr. ROSENBERG. I think so.

Mr. WHEELER. Why was it so long after the transfer of the documents to Mr. Weinberg?

Mr. ROSENBERG. Mr. Weinberg had an interesting technique of stalling and just delaying things, and from week to week, we did not know what was going on, although we were reassured that in another 2 weeks it would be in, in another week it would be in, and then finally, in another 3 weeks it would be in, and I suppose he simply had to make some attempt to fulfill this thing at one point, and so he arranged for Eden and Minsky to come down to Florida and pick up our first payment.

Mr. WHEELER. Do you recall any instance in November 1978 when he——

Mr. ROSENBERG. It could be, it could be. You know, I am not sure of my time. It happened after he had the certificates for a period of time, and he was ready make the first payoff.

Mr. WHEELER. Did Mr. Minsky or Mr. Eden ever fly to **[55]** Florida in order to transfer other securities to Mr. Weinberg that you know of?

Mr. ROSENBERG. Not that I know of.

Mr. WHEELER. Do you know of any other instance—of any instance—in which Mr. Minsky or Mr. Eden gave Mr. Weinberg other securities?

Mr. ROSENBERG. No; I do not.

Mr. WHEELER. Samples of other securities?

Mr. ROSENBERG. Not to my knowledge.

Mr. WHEELER. Were you in regular communication with Mr. Minsky and Mr. Eden in late 1978?

Mr. ROSENBERG. Was I in communication with them?

Mr. WHEELER. Yes.

Mr. ROSENBERG. Oh, sure.

Mr. WHEELER. Did you tell them when you were in the process of filling out the $1.2 billion in CD's and LC's?

Mr. ROSENBERG. Did I tell them?

Mr. WHEELER. Yes.

Mr. ROSENBERG. Mr. Eden worked with me on it.

Mr. WHEELER. Did Mr. Minsky?

Mr. ROSENBERG. I do not think he was around. I am sure he was aware of it, but it was superfluous to have him around. Mr. Eden and I came in on a Saturday and a Sunday and accomplished this task with the assistance of the people who did the typing.

[56] Mr. WHEELER. When you first met with Mr. Weinberg, Mr. Rosenberg, did you meet with him in order to discuss legal transactions and illegal transactions?

Mr. ROSENBERG. I had no idea we were going to discuss any illegal transactions. They were strictly legal. I was there to try to arrange money for our leasing company. That was my original meeting with him and our original intent.

Mr. WHEELER. But at that first meeting, he raised two different types of illegal transactions with you, one with respect to securities and one with respect to corrupt politicians?

Mr. ROSENBERG. No; he did not bring up politicians at that time; he brought up Atlantic City.

Mr. WHEELER. Right, and the "juice," and we talked about that.

Mr. ROSENBERG. Yes; that is right.

Mr. WHEELER. And Mr. Minsky said that he had the "juice" in Atlantic City?

Mr. ROSENBERG. I do not know whether Minsky did it or not. It is my impression Eden did it.

Mr. WHEELER. Mr. Eden?

Mr. ROSENBERG. Yes; because he was working firsthand with Errichetti, and I do not think Minsky was.

Mr. WHEELER. Did you have any meetings with Mr. Weinberg after your first meeting with Mr. Errichetti in December?

[57] Mr. ROSENBERG. Did we meet afterward?

Mr. WHEELER. That is right.

Mr. ROSENBERG. Oh, sure. We met in Atlantic City.

Mr. WHEELER. When was that?

Mr. ROSENBERG. After our meeting with Errichetti, we arranged to have a meeting in Atlantic City, when Errichetti was going to be a host, more or less, to introduce McCloud, Weinberg—I do not think there was anybody else—and we met in Atlantic City. In fact, they put us up at the Hilton Hotel. Both Eden and I were down there.

Mr. WHEELER. Did there come a time when it became clear to you that McCloud or DeVito knew about the CD and LC transactions?

Mr. ROSENBERG. I was not sure McCloud knew anything about it, and I went out of my way to inform him of it.

Mr. WHEELER. When did you do that?

Mr. ROSENBERG. That, I do not recall specifically, but I would say it was several months after we had been stalled around with terms of being paid.

Mr. WHEELER. Why did you tell McCloud?

Mr. ROSENBERG. Well, he was supposed to have been the chairman of the board of Abdul and responsible for these things being carried out.

Senator MATHIAS. Excuse Me. You said "stalled around" in being paid?

[58] Mr. ROSENBERG. We were constantly being stalled around. It was a very clever technique. Anything that was in the news was used as an excuse to stall; whatever was newsworthy at the time. In those months, the Shah was going through a lot of foment in Iran, and this news was coming up, and the idea was that the money had been transferred from the Emirates to Iran and suddenly blocked because of the revolution that was taking place there—that kind of thing.

Mr. WHEELER. All right, Mr. Rosenberg, did there come a time in early 1979, sometime in late January or early February, when you saw a picture of an FBI agent, a woman FBI agent, in the newspaper?

Mr. ROSENBERG. It wasn't I.

Mr. WHEELER. Excuse me?

Mr. ROSENBERG. It was not I who saw it. Somebody else did, and I heard about that.

Mr. WHEELER. Someone told you about it?

Mr. ROSENBERG. Oh, I was told of it, sure.

Mr. WHEELER. When were you told about it?

Mr. ROSENBERG. My first information on that, I think, took place years later when I first met Mr. Spivack and Mr. Adelman.

Mr. WHEELER. In other words, one of the Government attorneys?

Mr. ROSENBERG. Yes, yes. I did not know about it.

[59] Mr. WHEELER. Is it your testimony that you never talked to Weinberg about that incident?

Mr. ROSENBERG. To the best of my knowledge.

Mr. WHEELER. Had you ever met agent Margot Denedy?

Mr. ROSENBERG. Oh, yes. She was in Atlantic City. That was the person who came. She was along. I knew there was somebody else. She was there, as well. She may have been there the first time or the second time. We were down in Atlantic City twice, and I think, to the best of my knowledge, she was there the second time, and she was passed off as the girlfriend of the Emirates, or the sheik or something. And it was the second time we were down there, and that is when Williams and his lawyer, Feinberg, first appeared on the scene with reference to a mine, and a man named Sandy Williams was at a meeting. And I think they were a little surprised that I had gotten into that meeting, but it was so.

Senator HUDDLESTON. Which Williams are you referring to there?

Mr. ROSENBERG. Senator Williams.

Senator HUDDLESTON. Thank you.

Mr. WHEELER. I thought you referred to both Senator Williams and Sandy Williams; did you?

Mr. ROSENBERG. Yes; I did.

Mr. WHEELER. And they were both present?

Mr. ROSENBERG. No. Senator Williams was not there. [60] Feinberg was there.

Mr. WHEELER. Feinberg was?

Mr. ROSENBERG. And Sandy Williams was there. He was a short, slight fellow.

Mr. WHEELER. And they referred to Senator Williams?

Mr. ROSENBERG. Oh, yes.

Mr. WHEELER. In your presence?

Mr. ROSENBERG. Oh, yes. And Errichetti was there.

Mr. WHEELER. Would you know agent Denedy if you saw here again today?

Mr. ROSENBERG. Would I know the agent if I saw her?

Mr. WHEELER. Yes. Would you recognize her?

Mr. ROSENBERG. I might.

Mr. WHEELER. Do you remember having seen her picture in the newspaper?

Mr. ROSENBERG. No.

Mr. **Wheeler**. Mr. Rosenberg, there came a time—and let me preface what I am about to say to you by telling you that the committee has voted that names of Congressman and Senators whose names have been associated with Abscam should not be mentioned in public.

Mr. **Rosenberg**. I apologize.

Mr. **Wheeler**. Well, that is all right. This is a closed hearing. But all I am saying to you is I am going to mention a name now, and I would ask you that after this hearing is **[61]** over, if you are interviewed by newspaper reporters, for example, not to mention this individual's name.

Mr. **Rosenberg**. Sure.

Mr. **Wheeler**. There came a time, Mr. Rosenberg, when you brought up the name of Senator [deleted][1] is that right?

Mr. **Rosenberg**. [Nodding head.]

Mr. **Wheeler**. What was the context in which you raised Senator [deleted] name?

Mr. **Rosenberg**. I would say that somewhere in the middle of 1979, roughly August or so, I was pressing Weinberg for our money, and I was pressing him for various other things that I had been involved with him in trying to get done. He came up with a brilliant plan for me to be able to make some money because the other things could not materially be paid off. He thought that I had a lot of political influence. I did not know anybody. But if I could get ahold of Senator [deleted] and Senator [deleted]—and he asked me for the name of my Congressman, who turned out to be Representative [deleted]—they would be ready to work out a deal with any of these men who would prepare immigration legislation to permit these two sheiks to enter the United States under a special dispensation. He mentioned the fact that they were quite concerned with what had happened to the Shah and what was going on with Somoza and a few of the other men whose governments were shakey at the time, and since they were being cared for, they were looking to **[62]** take care of it. Now, none of it was going to be done immediately, but they wanted to prepare something so that when they required it, in case the Middle East broke out with war or takeovers or governments were overthrown, these men could quickly enter the United States. And he proposed that I get in touch with these legislators and see what could be worked out.

Since I was busy trying to retain my relationship there and keep things flowing, I said I would try. I did not know Senator [deleted], I did not know Senator [deleted]. I did not even know Mr. [deleted]. And I never contacted them.

Mr. **Wheeler**. Did you represent to Weinberg that you did know any of those gentlemen?

Mr. **Rosenberg**. Sure, sure.

Mr. **Wheeler**. Who raised their names first—you or Mr. Weinberg?

Mr. **Rosenberg**. Weinberg.

Senator **Mathias**. Could we get the date of this?

Mr. **Rosenberg**. Senator, I did not hear the question.

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[1] The omission of sensitive information in these hearings is identified by "[deleted]." For a complete explanation of why, see S. Rep. No. 97-682, 97th Cong., 2d Sess. V-VI (1982).

Senator MATHIAS. What was the date of this particular meeting when Mr. Weinberg suggested that you make a contact——

Mr. ROSENBERG. I think this information with politicians would be somewhere around August-September 1979, somewhere around that time. I cannot be precise.

Mr. WHEELER. Did you make any attempt at all to contact Senator [deleted], Senator [deleted], or Mr. [deleted]?

[63] Mr. ROSENBERG. Oh, no, not at all.

Mr. WHEELER. Did you inquire of anybody as to whether they knew them?

Mr. ROSENBERG. Not at all.

Mr. WHEELER. Did you talk to Mr. Eden about this?

Mr. ROSENBERG. I think at this time, Mr. Eden and I and Mr. Krauss and Mr. Minsky had separated out. I think that we had given up our business—or, I had given it up. They could do what they wanted, but I had walked away from it.

Mr. WHEELER. So the answer is "No?"

Mr. ROSENBERG. The answer is "No."

Mr. WHEELER. And you also did not talk to Mr. Minsky or Mr. Krauss about this?

Mr. ROSENBERG. No, I do not think so.

Mr. WHEELER. Did you talk to anybody about Mr. Weinberg's request?

Mr. ROSENBERG. I spoke to Mr. Weisz.

Mr. WHEELER. Stanley Weisz?

Mr. ROSENBERG. Stan Weisz.

Mr. WHEELER. What did you tell Mr. Weisz?

Mr. ROSENBERG. I explained what Mr. Weinberg was looking for in terms of immigration legislation and asked him if he knew anybody, and he said no. And this, I can pinpoint, because as I recall, it was about September 1979.

Mr. WHEELER. Why is it that you can pinpoint that?

[64] Mr. ROSENBERG. Yes, because he said no at the time, and that was about it, until in October or November, he told me he was going down—no, I am sorry. He went down South to visit a client and I think to visit some family. When he came back—and this was several months afterward, so I would say roughly November or December—he said he had spoken to a client and mentioned this political need that had been raised, and he came up with somebody who knew someone in the South. And this was the way Representative Kelly was drawn into this.

Mr. WHEELER. After the first incident when Mr. Weinberg raised the names [deleted] and [deleted], did you have any further conversation with him about those gentlemen?

Mr. ROSENBERG. Oh, yes. I am sure I told him that I had seen them and they were not interested. That was that reference I made to the bill that I put in for about $320. That was supposed to have been for dinner with one of these men on a trip down here. But there was nothing to that.

He was looking for this, as much as he could get developed, with anybody at all, and he mentioned figures. He said they were ready to pay $50,000 for a Senator and $25,000 for a Representative, and if the legislation was written and it was effective, they would double the figures. And as a matter of fact, that was the time he said, "I think you can make some money on it, because if you talk to Senator **[65]** [deleted] split it with him."

Mr. **Wheeler**. Mr. Chairman, I have no further questions.

Senator **Huddleston**. I would just like to be certain that the whole idea of making contact with the Senators came from Mr. Weinberg himself.

Mr. **Rosenberg**. Senator, I am under oath.

Senator **Huddleston**. Yes, sir.

Mr. **Rosenberg**. I am quite a changed man from what I was 4 years ago. I am trying to live responsibly and honestly. And I give you my unvarnished statement that this was initiated by Mr. Weinberg, just as I reported that he gave me the letters of credit and certificates of deposit; without question.

Senator **Huddleston**. And prior to that time, you had had no idea of ever pursuing this kind of activity?

Mr. **Rosenberg**. None whatsoever.

Senator **Huddleston**. You had made no——

Mr. **Rosenberg**. None whatsoever.

Senator **Huddleston** [continuing]. Groundwork. As you have testified, you did not even know [deleted] is that correct?

Mr. **Rosenberg**. That is correct. I would like to tell you one more modification that took place. In my anxiety to remain in this milieu and try and make some money out of it—I still did not know that it was a phony type of operation—I read in the Wall Street Journal that PAC committees which had been formed—there was an extensive article about it, and I **[66]** picked up all kinds of information from it: How much the committees could contribute to people's political campaigns; what favors they might get as a result of it; who was responsible for placing this money in the various campaigns. And I came up with this proposal to them. And I remember the attorney said, "How did you ever get with these men?" [deleted] was the name. He was the man in charge of one of these things—because I did not know these people; I just read it. Well, he was a little surprised, too, and I just got the paper and left with him the entire article, and it is all printed out there.

Senator **Huddleston**. Was this after Weinberg had made his suggestion to you?

Mr. **Rosenberg**. Oh, yes, because I knew I was not going to get in touch with [deleted] or Senator [deleted] or Mr. [deleted], and I knew I was not going to propose anything like this type of thing. I did not know what had been done. I had been told by Mr. Weisz, by the way, that it was not uncommon to write immigration legislation, but you certainly did not pay anybody for it.

Senator **Huddleston**. Now, back to the very beginning of your association with Mr. Weinberg, just to reiterate, the impression I got from your testimony is that when you first went to Mr. Weinberg, you were going for a totally legitimate business arrangement; is that correct?

[67] Mr. **Rosenberg**. That is correct, sir.

Senator **Huddleston**. And you had no other idea except that you may find some legitimate money that would be available to use in your leasing business?

Mr. **Rosenberg**. I never expected anything of what ultimately developed.

Senator HUDDLESTON. And all of what ultimately developed was suggested to you by Mr. Weinberg or others; is that correct?

Mr. ROSENBERG. That is correct, sir.

Senator HUDDLESTON. You were willing to participate in it, but as far as the initiation of the program itself was concerned, it came from those individuals?

Mr. ROSENBERG. That is absolutely the truth.

Senator HUDDLESTON. That is all the questions I have, Mr. Chairman.

Senator MATHIAS. Mr. Rosenberg, you testified that at one point, you loaned Mr. Weinberg $1,500 for traveling expenses so that he could go to Florida.

Mr. ROSENBERG. Yes, sir.

Senator MATHIAS. Did he ever pay you back?

Mr. ROSENBERG. No, and Senator, I also forgot to mention that when we were invited down to a boat or yacht—ostensibly, the sheiks' yacht—I think this was in February of 1979—to celebrate Senator Harrison Williams' arrangement with the **[68]** men involved, with the sheiks and with Mr. McCloud and Mr. Weinberg, Bill Eden went down. I refused to do it. By this time, I was turned off. I felt that we were just being strung out. He borrowed $300 from Mr. Eden at that time. I know I had forgotten to mention that, because no question about the boat came up, but that is so.

Senator MATHIAS. Did Mr. Weinberg ever try to get you to involve any other politicians?

Mr. ROSENBERG. Well, after starting with the two Senators and Mr. [deleted], and getting nowhere with it, and when Mr. Weisz came back and reported the fact that his client knew somebody down in Florida who might be useful in this type of thing, Mr. Weinberg got all excited again and began to pursue this with Representative Kelly, looking to make arrangements for meetings, and so on.

Senator MATHIAS. So that Representative Kelly was drawn into this as a result of Weisz's suggestion to Weinberg, or was it vice versa?

Mr. ROSENBERG. No, no. I had mentioned this to Mr. Weisz in about September. He had gone down to Florida about November or so. And there, after visiting with his client, he brought this up in just a matter of conversation. The man—I think his name is Ciuzio—I heard of him as "Gino"—said he knew somebody. He contacted Representative Kelly, and Representative Kelly was interested in participating with them. Mr. **[69]** Amoroso and Weinberg flew down to Florida and met with Mr. Ciuzio prior to arrangements being made up here, and then we came into Washington in January. And that was the further business on that. Outside of the first three men I have mentioned and Representative Kelly, Weinberg did not discuss this any further.

Senator MATHIAS. Who first mentioned Kelly's name?

Mr. ROSENBERG. Mr. Weisz informed me of his name after I had discussed it with him several times and learned that there was a Representative available down there.

Senator MATHIAS. And did you transmit Kelly's name to Weinberg then?

Mr. **Rosenberg**. I did not know the name, and I made up a couple of names. Of course, Weisz was not clear on what the name was. Eventually, we gave them the proper name.

Senator **Mathias**. But you are the one who gave it to Weinberg?

Mr. **Rosenberg**. Either I or Mr. Weisz, because they had conversations, as well.

Senator **Mathias**. They had conversations out of your presence.

Mr. **Rosenberg**. Oh, yes.

Mr. **Wheeler**. Mr. Rosenberg, was one of the names that you gave Mr. Weinberg the name, [deleted].

Mr. **Rosenberg**. Oh, [deleted] yes. I had suggested **[70]** [deleted]. Weisz had said it was an [deleted] name, so I said Senator [deleted]. I think Senator [deleted] must have been dead 20 or 25 years or more, but I did not think Weinberg would know it. And then I came up with Smith, or some such name. But the purpose of that was to show that I was very much involved with this, and I was not to be excluded. But I really felt like pretty much of a dope, because I just did not know who the man was.

Senator **Mathias**. Mr. Rosenberg, you testified a minute ago in response to Senator Huddleston's question that you had seen the light.

Mr. **Rosenberg**. Yes, that is for sure.

Senator **Mathias**. Do you mind telling us, was your change in attitude brought about as a result of the various judicial proceedings to which you have been subjected?

Mr. **Rosenberg**. No, I do not think it was brought about because of judicial proceedings.

Senator **Mathias**. You have been through——

Mr. **Rosenberg**. Oh, I have been through quite a bit of them.

Senator **Mathias**. And you pleaded guilty to certain criminal charges?

Mr. **Rosenberg**. Yes; I pleaded guilty to the charge that we had bribed or I was part of a conspiracy to bribe, Representative Kelly. We did.

Senator **Mathias**. And that was what you pled to?

[71] Mr. **Rosenberg**. That is correct, sir.

Senator **Mathias**. And that was the only charge that——

Mr. **Rosenberg**. That was the only charge that the Government was going to make against me if I pleaded and assisted them with their case, which I have tried to do over the last several years and have given them as much information as I could and as accurately as I could.

Senator **Mathias**. Well, we appreciate your attendance here today and the obvious efforts you have made to answer the questions.

Mr. **Rosenberg**. Well, fortunately, I got myself a job and began to get back on my feet. Unfortunately, my wife and I were separated because I think I was just caught up in a pretty much of an obsession; an obsession to make money, and an obsession to be successful because I made money. And I was not too concerned on how I made the money. And since that time—and I have still to serve some time, I am sure; my sentence has been put off only because my attorney has been tied up with some other cases—but once I got through with this, I got myself a job in the air cargo business, selling to various firms, and making enough money to get by. And then I took a job over at St. Francis Hospital in Rosslyn, N.Y., which is primarily for children who are cardiac cases, and I have thoroughly enjoyed it. I present a grandfather image, and these tykes are this big and cute as a button, [72] and all of them in trouble, and so you kind of forget yourself a little bit when you run into people who are worse than you.

Senator **Mathias**. They are in even more trouble than you are in.

Mr. **Rosenberg**. Far more, like the fellow who complained he did not have any shoes until he met a man without feet. So this is that type of thing. And I think I have changed rather substantially. I think I am a nicer fellow for it. I am more pleased with myself than I was before, and I hope I have been able to help with what you folks have been asking.

Senator **Mathias**. Let me just ask you one final question. Was it clear to you in your conversation with Mr. Weinberg that he wanted you to contact Senator [deleted] and Senator [deleted] for the purpose of offering them a bribe?

Mr. **Rosenberg**. Yes.

Senator **Mathias**. There wasn't any doubt in your mind about that?

Mr. **Rosenberg**. He gave me the figures. He told me how much to offer them.

Senator **Mathias**. And for what?

Mr. **Rosenberg**. In order for them to look with favor on preparing legislation to let these two men in, and if the purpose actually arrived—let us say we were discussing this in September of 1979, and if the need arose in 1980 for this legislation to be written, they would be participants in it, and [73] then the fee that they would receive initially would be doubled.

Senator **Mathias**. Well, once again, thank you very much.

Senator **Huddleston**. Mr. Chairman, before you wind up, let me ask, did he indicate to you any information that he had that would lead him to believe that these individuals would be receptive to that kind of a proposition?

Mr. **Rosenberg**. No.

Senator **Huddleston**. Nothing at all?

Mr. **Rosenberg**. No, he did not. He did not indicate that in any fashion at all. He just mentioned their names, and he said, "We would like them."

Senator **Huddleston**. Now, you mentioned one invitation to go to Florida for a boat trip.

Mr. **Rosenberg**. Yes.

Senator **Huddleston**. Did you ever go to Florida to participate in a boat——

Mr. **Rosenberg**. No, to meet with them, no. I have been in Florida, but not for that purpose.

Senator **Huddleston**. Not with this particular——

Mr. **Rosenberg**. No; nothing to do with Abscam at all.

Senator **Huddleston**. Just one final question, a little philosophically, maybe. You have been on both sides now of the legal barrier, and you observed how this scam worked from the Government's viewpoint and how it worked from the victims' [74] viewpoint.

And you went to a meeting for the purpose of legitimately obtaining business assistance and got yourself caught in the scam. What is your viewpoint on this kind of an operation by the Federal Government when perhaps even they knew they are dealing in an area where illegal activity occurs, but as far as the activity itself, it is an activity that they have created, in your case, in the case of Mr. Weinberg suggesting to you an illegal operation with the enticement of some $7 million to you. How many people do you think would resist that kind of offer?

Mr. ROSENBERG. Not many, not many. I think that we live in a society where we have been conditioned to recognize success in several ways. There are great musicians, great scientists, there are outstanding Senators, leaders in our political system. But fundamentally, I think that our society recognizes success monetarily, and if the fellow is vulgar and coarse and uncouth, and you would not have him to your home under any circumstances, but he had made himself $4 or $5 million as a manufacturer of men's clothes, he would be successful.

I think that we are very materialistic in our society, and that recognition goes throughout. And it is a terrible temptation for men who are comfortable. To this day, I could not tell you why Stan Weisz wanted to get involved with this situation.

[75] Senator HUDDLESTON. Was he well off already?

Mr. ROSENBERG. I would have thought that Stan Weisz was as comfortable as a man could be. He lives in a lovely home, he has a nice family. He has what I thought was a profitable accounting business. For him to pick up another $50,000 to me would have been nonsense. I could not imagine why anybody would want to do it, and yet, there was not the slightest hesitation about wanting to do it, or doing it. When you get into higher figures, it becomes just that much more difficult for men to say "No."

What is my opinion about the Government doing this? I think we would have a man who corrupted Hadley Byrd if you turned loose anybody who could talk in terms of unlimited money. When I was a young boy, $1,000 would do it. When I was in my twenties or thirties, $10,000 or $20,000 would do it. Today, a couple of million would do it. Maybe some fellows need $50 million, maybe they need $100 million.

I know that, reading constantly, I have seen the corruption that goes on and the bribery that goes on all around the world. We are indicting corporations for bribing people, and yet there is no other way for them to get any business where this type of thing takes place. I think it is a sad commentary on where we are, but if you are pragmatic and realistic, that's about it.

Senator HUDDLESTON. And you think there is nothing wrong [76] with the FBI, then, in creating these kinds of circumstances to see who will fall into the trap?

Mr. ROSENBERG. The only think I can say about it being wrong is that they will get to a figure high enough to corrupt anybody. My goodness, the President of the United States was corrupt, and Mr. Nixon resigned. You do not have to go any higher than that.

Senator HUDDLESTON. Thank you, Mr. Chairman.

Mr. MATHIAS. Thank you, Mr. Rosenberg.

Mr. ROSENBERG. Thank you.

Senator **Mathias**. The committee stands adjourned subject to the call of the Chair.

[Whereupon, at 11:52 a.m., the committee was adjourned, subject to the call of the Chair.]

[1] REDACTED COPY OF EXECUTIVE SESSION HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

TUESDAY, SEPTEMBER 14, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:04 a.m., in room 357, Russell Senate Office Building, Hon. Warren B. Rudman presiding.

Present: Senators Rudman, Huddleston, Leahy, and Simpson.

Staff present: Malcolm F. Wheeler, deputy counsel.

Senator RUDMAN. The select committee will come to order.

If our witness, Mr. Criden, would please stand, I will administer the oath.

Do you swear the testimony you are about to give in the course of this hearing will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. CRIDEN. I do.

TESTIMONY OF HOWARD L. CRIDEN

[2] Senator RUDMAN. Would you state for the record your full name and address?

Mr. CRIDEN. Howard L. Criden, C-r-i-d-e-n, 1980 South Ocean Drive, Allandale, Fla. 33009.

Senator RUDMAN. And would you identify for the committee your counsel?

Mr. CRIDEN. Richard Ben-Veniste, Washington, D.C.

Senator RUDMAN. Now, you have a copy, I believe, of Senate Resolution 350 and the committee rules?

Mr. CRIDEN. Yes, sir.

Senator RUDMAN. I am going to ask our cocounsel here, Mr. Wheeler, to start the questioning.

Mr. WHEELER. Thank you, Senator.

Mr. Criden, do you know a gentleman named Melvin Weinberg?

Mr. CRIDEN. Upon the advice of counsel, I would respectfully decline to answer any further questions under my rights under the fifth amendment of the Constitution of the United States.

Senator RUDMAN. Mr. Criden, I am going to communicate to you an order of the U.S. District Court for the District of Columbia, September 2, 1982, compelling your testimony today and immunizing you from its use against you in a criminal case.

The order of the court, dated September 2, ordered:

"On consideration of the application of the United States Senate [3] Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, and the Memorandum of Points and Authorities and exhibits in support thereof, the Court finds that the procedural requisites set forth in 18 United States Code, section 6005, for an order of the court, have been satisfied. Accordingly, this second day of September 1982, it is ordered that Howard L. Criden may not refuse to appear and to testify before the U.S. Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice on the basis of his privilege against self-incrimination, and it is so ordered.

"It is further ordered that no testimony compelled under this order, or any information directly or indirectly derived from such testimony, may be used against Howard L. Criden in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this order."

It is signed by the Presiding United States District Court Judge. Do you understand that order, Mr. Criden?

Mr. CRIDEN. Yes, sir, yes, sir.

Senator RUDMAN. Mr. Wheeler?

Mr. WHEELER. Mr. Criden, do you know a gentleman named Melvin Weinberg?

Mr. CRIDEN. Yes, I do, sir.

[4] Mr. WHEELER. Would you please describe the circumstances under which you first met or spoke to Mr. Weinberg?

Mr. CRIDEN. I believe it was sometime in July 1979, the latter part of July 1979, I met Mr. Weinberg at Fort Lauderdale, Fla. I had flown down from Philadelphia with Mayor Errichetti, my former law partner, Mr. Johanson, and a Mr. Meiler, and met Mr. Weinberg at the airport in Fort Lauderdale.

Mr. WHEELER. Was that on July 26, 1979, to the best of your recollection?

Mr. CRIDEN. To the best of my recollection, yes—well, I think it was the day before. It probably was July 25.

Mr. WHEELER. All right. Did you remain in Florida on July 26, 1979?

Mr. CRIDEN. Yes, sir, yes, sir.

Mr. WHEELER. And did you, on that date, go on a boat trip——

Mr. CRIDEN. Yes, sir.

Mr. WHEELER [continuing]. On a yacht called *The Left Hand*?

Mr. CRIDEN. That is correct.

Mr. WHEELER. Was Mr. Weinberg present on that boat trip?

Mr. CRIDEN. He was.

Mr. WHEELER. Did there come a time during the course of that boat trip that you had a conversation in which Mr. Weinberg, a man who had been identified to you as "Mr. DeVito", [5] and Mayor Angelo Errichetti of Camden, N.J., and you participated in the conversation?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. Would you describe that conversation?

Mr. CRIDEN. Well, the purpose of our visit to Florida to meet with Mr. Weinberg and Mr. DeVito was to obtain financing for a client of mine who had an interest in building a gambling casino in Atlantic City; he had acquired the ground and was now seeking to obtain the necessary financing to erect the facility.

Mayor Errichetti had advised me a week or so before that he knew some people who might be interested in financing a casino, and that was the purpose of our trip. Mr. Weinberg, Mr. DeVito, Mayor Errichetti, Mr. Johanson, Mr. Meiler, and myself had arranged this meeting in order to go over a feasibility study that we had had prepared and some drawings and engineering surveys that we had; that was the purpose of the meeting, and that was the substance of the conversation that took place onboard *The Left Hand.*

Mr. WHEELER. Now, that was a conversation, as you have just described it, at which a gentleman named Mr. Meiler was also present.

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. The conversation that I am asking you about, if one occurred, is one in which the only participants were you, [6] Mr. Errichetti, Mr. DeVito, and Mr. Weinberg, aboard *The Left Hand* on July 26, 1979. Do you recall such a conversation?

Mr. CRIDEN. Well, there were several meetings of that nature onboard the boat. It was sort of a free-flowing—by the way, let me just add that my younger son was also in that group. We had several conversations about financing the casino and about obtaining some funding from Mr. DeVito and Mr. Weinberg's client, the sheik.

Mr. WHEELER. Do you recall a conversation involving just the four people I have identified in which Mr. Amoroso or some other individual in that group of four mentioned Somoza?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Do you remember a conversation in which the person who was the captain of the yacht mentioned Somoza in your hearing?

Mr. CRIDEN. No, sir. To my recollection, to the best of my recollection, I never heard the name of Somoza mentioned in my presence onboard the boat.

Mr. WHEELER. Do you remember any conversaion on the boat that day in which the Shah of Iran was mentioned in your hearing?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Was there any discussion in your hearing on the boat that day of any sheiks in any country in the [7] Middle East who might need to leave the Middle East and try to seek asylum in the United States at any future time?

Mr. CRIDEN. Not to my recollection.

Mr. WHEELER. Was there any discussion of politicians in your presence on the boat?

Mr. CRIDEN. No, sir.

Mr. WHEELER. After the boat trip, did you then fly back to Philadelphia?

Mr. CRIDEN. Yes, sir. That afternoon, Mayor Errichetti, Mr. Meiler, Mr. Johanson, and I returned to Philadelphia.

Mr. Wheeler. Did you sit next to Mr. Errichetti on the flight back?

Mr. Criden. Yes, sir.

Mr. Wheeler. Were there just two of you, or were you three abreast?

Mr. Criden. No. There were two and two. Mr. Meiler and Mr. Johanson sat in front of us. Mr. Errichetti and I sat side-by-side.

Mr. Wheeler. In the course of that return flight to Philadelphia, did you and Mr. Errichetti discuss any conversation that he purported to have had on the boat about politicians?

Mr. Criden. Well, we discussed politicians. I do not know whether or not the discussion that he had took place on the boat or not, but he did mention the substance of what you [8] are saying, or what your question is, to me on the plane, yes.

Mr. Wheeler. What did Mr. Errichetti say to you?

Mr. Criden. He said that he had gone through a situation which was like a fantasy, a fairyland, as he called it, in which the sheik and his representative had all kinds of money—"tons of money", as he put it—and that all they were interested in doing for the moment, in addition to financing what other investments they could obtain, wanted to meet prominent people, Members of Congress, other high-ranking politicians in the United States, and for that, they would pay substantial sums of money, and that he had just gone through a situation of that nature in which there was approximately $100,000 involved. But he did not mention any names.

Mr. Wheeler. He did not mention any names?

Mr. Criden. No, sir.

Mr. Wheeler. Did he mention the position of the politician in respect to which he had received $100,000?

Mr. Criden. No, sir.

Mr. Wheeler. Now, you just said that he indicated these individuals he had discussed wanted to meet politicians. Did he explain what he meant by they wanted to "meet" politicians?

Mr. Criden. He went into some discussion that the country from which they came from, it was their understanding [9] and their upbringing that it was very important that they be on a familiar basis with high-ranking public officials, very important to them.

I do not believe he went into any question at that time as to the immigration question. I do not believe so.

Mr. Wheeler. Did he tell you what country these people were from?

Mr. Criden. No, just that they were from the Mideast.

Mr. Wheeler. You said that you do not think that he mentioned anything about immigration problems?

Mr. Criden. Not at the time, no, not on the plane ride.

Mr. Wheeler. Did there come a time when you did hear something about immigration problems with respect to these people from the Mideast?

Mr. Criden. Yes?

Mr. Wheeler. When did that first occur?

Mr. Criden. I probably heard it first, I would say, from Congressman Myers, I believe, who related to me what he had been questioned about when he went to the meeting with Mr. Weinberg and Mr. Amoroso, accompanied by Mayor Errichetti.

Mr. WHEELER. Congressman Myers' meeting that you are referring to occurred on August 22, 1979; is that correct?

Mr. CRIDEN. I assume that that is the correct date, somewhere in there, yes, in that area.

Mr. WHEELER. How soon after that meeting did Mr. Myers [10] mention the immigration issue to you?

Mr. CRIDEN. Oh, it was that afternoon, when we returned from a meeting in New York, and went back to my office in Philadelphia.

Mr. WHEELER. Did Mr. Myers tell you about the immigration problem?

Mr. CRIDEN. Well, he said that they had asked him whether or not he would be of assistance—if Congressman Myers, that is, would be of assistance—to their client in the event he needed to come into the United States, needed to have some friends in high places, so that he would be able to get into the United States and become a citizen of the United States.

Mr. WHEELER. Did he indicate to you that, at the meeting, he had been asked to guarantee that he would assist these individuals if they should need help?

Mr. CRIDEN. He said that he was requested to give some assurance that he would be of assistance to them if that situation should arise.

Mr. WHEELER. Did he tell you that he received money in return for giving such a promise?

Mr. CRIDEN. No; he did not say it in that particular term. He said that he had given them assurance, although he told me that Mayor Errichetti had advised him that nothing would ever take place, that this was all just a play, and that, [11] "Just come on strong. Say anything that they ask you. Tell them yes, because nothing is ever going to happen."

Mr. WHEELER. As best you can recall, did he say that Mayor Errichetti had said, "Nothing is ever going to happen," or did he say that Mayor Errichetti said, that, "Probably, nothing will ever happen?"

Mr. CRIDEN. I really could not—it is 3 years ago, and it is very difficult to remember the finer points of that. I really cannot remember.

Mr. WHEELER. Once you heard about the immigration—what we will call the asylum scenario—that is, the notion that there might be people in the Mideast who might want help from Congressmen with respect to immigrating in the United States, did you have the same understanding at all times as to whether that issue might actually arise, that they might actually ever ask Congressmen for help?

Mr. CRIDEN. I was under the impression throughout the entire situation that they would never be asked to do anything, and Mayor Errichetti had assured me that this was all just a play, a way for Mr. Weinberg and Mr. DeVito to spend a lot of the sheiks' money, and that nobody would ever be called upon to do anything.

Mr. WHEELER. Now, when you say "a play," what was your understanding of the nature of this play?

Mr. CRIDEN. Well, as I understood it, Mr. Weinberg and [12] Mr. Amoroso were employees of the sheik in some capacity, and were charged with some sort of responsibility of obtaining sources of investments and obtaining some sort of connections with high-ranking politicians and meeting prominent people at the sheik's request, so that they would have the ability to call upon somebody in the event they needed some assistance.

Mr. WHEELER. Well, did you have an understanding that the reason that the sheiks would probably never call on the Congressmen was because the likelihood of the sheiks being ousted from power in their home country was remote, or was your understanding based on some other factor?

Mr. CRIDEN. I do not really think I thought about it along those lines. I was assured by Mayor Errichetti that the situation would never arise, that it was all just, as he called it, a play, and the prime purpose was for Mr. Weinberg and Mr. Amoroso to get as much money as they could out of the sheik.

Mr. RUDMAN. If counsel would yield for a moment, just to understand the state of your mind. So essentially what was going on in your mind was that money was being obtained, essentially under false pretenses, from the sheiks. They were being bilked because they were willing to be bilked?

Mr. CRIDEN. Correct, sir. And I was also interested from the point of view that I was trying to do everything that I could to satisfy Mr. Weinberg and Mr. Amoroso to obtain [13] financing for my venture, for my clients' purposes, in the Atlantic City casino venture.

Senator RUDMAN. But there was little question in your mind, Mr. Criden, at the time that the sheiks or whatever they were, were being taken for a ride by their own employees, associates, agents, whatever?

Mr. CRIDEN. I would concur with that.

Senator RUDMAN. OK.

Mr. WHEELER. Mr. Criden, who is Mr. Louis Johanson?

Mr. CRIDEN. My former law partner.

Mr. WHEELER. And when you say "former law partner," he was your law partner at the time, namely, the summer of 1979——

Mr. CRIDEN. Yes, sir.

Mr. WHEELER [continuing]. And in fact, throughout the latter half of 1979?

Mr. CRIDEN. Yes, sir. He had been my law partner for some 15, 16 years.

Mr. WHEELER. Are you aware, Mr. Criden, that Mr. Johanson testified that on February 2, 1980—this is not testimony, I am sorry—he was interviewed by the FBI on February 2, 1980, and he informed the FBI that upon your return and his return from Florida on July 26, 1979, that you informed him, Mr. Johanson, that there were Arabs who were worried about the Middle East situation and were looking for influential people they could depend upon if immigration problems arose. Did you [14] know that Mr. Johanson made that statement to the FBI in an interview?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. Did you talk to him about the fact that he had made that statement?

Mr. CRIDEN. No, sir.

Mr. WHEELER. How did you find out that he had made that statement to the FBI?

Mr. CRIDEN. I think that statement was admitted at the trial, or I had seen the statement in the course of preparation for trial.

Mr. WHEELER. And you never talked to Mr. Johanson about it?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Did you ever talk to Mr. Johanson after February 2, 1980, about the events of July 26, 1979?

Mr. CRIDEN. No, sir.

Mr. WHEELER. But is my understanding correct that you disagree with his statement that I have just made?

Mr. CRIDEN. I do not know that I disagree with it. I think it is just a question of semantics, and perhaps his understanding of what I said and my recollection is almost exact, with the exception of the immigration question. I do not recall that that took place, that I mentioned that to him at the time. I still do not recall to this day.

[15] Mr. WHEELER. Do you know a Mr. Cook, Mr. Criden?

Mr. CRIDEN. Yes.

Mr. WHEELER. Who is Mr. Cook?

Mr. CRIDEN. Also, a former law partner of mine.

Mr. WHEELER. He was a law partner of yours in 1979?

Mr. CRIDEN. Yes.

Mr. WHEELER. Throughout that year.

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. And are you aware, Mr. Criden, that at the trial of former Congressman Lederer on January 7, 1981, that Mr. Cook testified that upon your return from Florida on July 26, 1979, you said to him that you had been told that there were sheiks' representatives on the yacht and that there was a discussion about the Somoza problem with Nicaragua and that these sheiks might want a safe haven in the United States?

Mr. CRIDEN. I have absolutely no recollection of Mr. Somoza's name having come up on the yacht. Maybe it did, but I just have no independent recollection of it.

Mr. WHEELER. Did you know that Mr. Cook testified in the matter that I have just described?

Mr. CRIDEN. Oh, sure.

Mr. WHEELER. Did you ever talk to Mr. Cook about trying to refresh your recollection about the events of July 26, 1979?

[16] Mr. CRIDEN. I do not believe so; no.

Mr. WHEELER. Do you know a person named Bernice Rush?

Mr. CRIDEN. Yes.

Mr. WHEELER. Who is Bernice Rush?

Mr. CRIDEN. She was a friend of mine.

Mr. WHEELER. Was she a friend of yours in 1979?

Mr. CRIDEN. Yes.

Mr. WHEELER. And in fact, were you dating Bernice Rush during 1979?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. Do you recall telling Bernice Rush in August 1979 that you had gotten yourself mixed up with various activities that could include conspiracy and other illegal activities?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. When in August 1979 or earlier did you conclude that you might be involved in illegal activities?

Mr. Criden. I would think it would be sometime after Congressman Lederer had a meeting with Mr. Weinberg and Mr. Amoroso. I do not recall when that was—also in the summer of 1979.

Mr. Wheeler. It may refresh your recollection that Congressman Lederer met with Mr. Amoroso and Mr. Weinberg in front of a video recorder on September 11, 1979.

[17] Mr. Criden. It would be shortly after that.

Mr. Wheeler. Well, let me, again—Ms. Rush stated—and this is not testimony; this was in an FBI interview—that it was in August 1979 that you told her you might be involved in illegal activities.

Mr. Criden. I do not recall it having been in August 1979.

Mr. Wheeler. Do you know a man named Joseph Silvestri?

Mr. Criden. Yes.

Mr. Wheeler. When did you meet Joseph Silvestri?

Mr. Criden. Sometime in the latter part of 1979.

Mr. Wheeler. Was it in July?

Mr. Criden. I really cannot recall the exact date. The first time I met Mr. Silvestri was in Florida, in my apartment in Florida, and he was introduced to me by Mayor Errichetti.

Mr. Wheeler. Do you recall a conversation with Mr. Weinberg on August 7, 1979, in which Mr. Weinberg stated to you that, "When the first candidate meets Yassir that the candidate has to come on strong"?

Mr. Criden. Yes, sir.

Mr. Wheeler. And do you recall answering that Mayor Errichetti would give the candidate a briefing?

Mr. Criden. Yes.

Mr. Wheeler. What was the briefing that you had in mind?

Mr. Criden. I do not really know, because Mayor [18] Errichetti said that he would handle—he would talk to "the candidate" and tell him what he had to say.

Mr. Wheeler. What was your understanding of what Mr. Weinberg meant when he said that "The candidate has to come on strong"?

Mr. Criden. Well, as I understood it from Mayor Errichetti, he had to come on, agree to whatever Mr. Amoroso and Mr. Weinberg said they wanted the Congressman to do.

Mr. Wheeler. When did you arrive at that understanding?

Mr. Criden. Well, I think at the time that Congressman Myers' appointment was arranged, Mayor Errichetti told me that he would brief Congressman Myers before he went into the meeting and tell the Congressman exactly what he was going to have to say. As a matter of fact, if my recollection is correct, there was some discussion about a "wet closing" and a "dry closing," somewhere along those lines, which the mayor and Mr. Weinberg would rehearse Congressman Myers in a so-called rehearsal session, and then they would go in and give the thing, as they said, for real.

Mr. Wheeler. Now, Mr. Criden, you said a few moments ago that your understanding was that all that the sheiks wanted was to meet, or have their representatives meet, those influential politicians. If that was your understanding, did it strike you as strange that Mayor Errichetti was going to counsel Congressman Myers to come on strong in terms of [19] promises of things he could do and would do?

Mr. CRIDEN. The whole thing was strange. It was, as Mayor Errichetti said to me on the airplane ride, a fantasy, something that was not a reality, but this was the way that these Middle Eastern people operated, and this was the way it would be in order to get substantial sums of money.

Mr. WHEELER. Well, when you reached the understanding that what Mayor Errichetti meant—or, what Weinberg meant—when he said that the first candidate had to come on strong, did that give you an indication that you might be involved in illegal activities at that time?

Mr. CRIDEN. I did not know what "come on strong" meant, other than to come on and say, "yes" to whatever they were proposing, within reason. I am sure that nobody was going to commit murder, or anything of that nature.

Mr. WHEELER. How about bribery?

Mr. CRIDEN. The truth of the matter is it never entered my mind at that time that it was bribery. As a matter of fact, I had Mr. Cook do some research at one stage of the game to see if we were violating any law, or whether we had to register as a foreign agent, because the impression given to me was that we were in some way legally representing Mr. Amoroso and Mr. Weinberg.

Mr. WHEELER. What laws did you think that you ought to have Mr. Cook do legal research on?

[20] Mr. CRIDEN. I thought that we ought to check to see if we were in any way representing a foreign power or a foreign representative who had to register under the lobbying laws of the United States.

Mr. WHEELER. Any others?

Mr. CRIDEN. And to see whether we were committing any crime of any kind. I think the obvious answer was that Mr. Cook felt that since nobody was ever going to be asked to do anything, he said he did not feel that we were doing anything, and that there was no quid pro quo, as he said, or we said, for the consideration that was being given; nobody was ever going to be called upon. There was always this discussion about a private bill that had to be introduced, and the research that we had done indicated that there was no such thing as a private immigration bill.

Mr. WHEELER. Was it your understanding that if a Congressman promised to perform some act, using his office, with the understanding or with the belief that he would never be called upon to do that, that that would be OK, that would not be a criminal violation?

Mr. CRIDEN. In my mind, that would not have been a criminal violation, as I understood that law at that time.

Mr. WHEELER. Did you ask Mr. Cook to do legal research on that question?

Mr. CRIDEN. I did not go into any specifics with Mr. [21] Cook at that time, except I asked him—and he knew what was going on—to research it and see whether or not we were doing anything wrong.

Mr. WHEELER. Did Mr. Cook in fact tell you that he had performed legal research on these questions?

Mr. CRIDEN. Yes.

Mr. WHEELER. And what did he tell you he had found?

Mr. CRIDEN. He said that we did not have to register under the lobbying laws because we were not representing a government of any kind, that we were representing individuals, in his mind, and consequently, we did not have to register as a lobbyist.

Mr. WHEELER. Did he tell you anything about crimes?

Mr. CRIDEN. No.

Mr. WHEELER. When you said to Bernice Rush at some point in the timeframe that we have already talked about that you thought you might be involved in illegal activities, what illegal activities did you have in mind then?

Mr. CRIDEN. I do not remember having said that to her until sometime after Congressman Lederer's situation.

Mr. WHEELER. All right. And whatever the time was that you said it to her, what illegal activities did you have in mind?

Mr. CRIDEN. I was then concerned, perhaps, that there were some laws with regard—I did not exactly think they were [22] bribery. I did not know whether they were bribery or not. But I really did not think they were bribery, because there was no consideration, because I had been assured by Mayor Errichetti that nothing was ever going to be asked for anybody to do anything, which was all just a great, big scheme to relieve the Arabs of some money. And I think Mr. Weinberg was part and parcel of the scheme, in my opinion. And obviously, I was trying to do anything possible to placate Mr. Weinberg and Mr. Amoroso in order to get my own venture financed; anything that I could do to assist them, I felt in my own mind, would be instrumental in accomplishing my purpose.

Mr. WHEELER. Were you in contact with——

Mr. CRIDEN. The illegality in my mind was, perhaps, Mr. Weinberg and Mr. Amoroso's scheme to relieve the sheiks of some money.

Mr. WHEELER. The crime of fraud?

Mr. CRIDEN. Yes.

Mr. WHEELER. And you thought maybe you were assisting in the fraud?

Mr. CRIDEN. Yes. There were situations, for example, where Mr. Amoroso—or Mr. Weinberg—said to me that they had withdrawn certain money to do things and that they could not put it back, and that this was the goose that laid the golden egg, and they did not want to create any problems, and they [23] did not want to go back to the sheik and tell him that they had to return money that they had already taken out of the Chase-Manhattan Bank.

Mr. WHEELER. Were you in contact with Mayor Errichetti frequently during this period?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. And did you discuss with Mayor Errichetti the developing of the asylum scenario?

Mr. CRIDEN. Yes.

Mr. WHEELER. Did Mayor Errichetti tell you that on August 8 1979, that Tony DeVito—who we now know to be Tony Amoroso—stated to Mayor Errichetti that the Congressman, "He would have to introduce some kind of legislation, right, some kind of bill or something," and Mayor Errichetti replied by stating, "Whatever you say"?

Mr. CRIDEN. I believe that there was a conversation.

Mr. WHEELER. Well, did Mayor Errichetti ever tell you that Tony DeVito had told him flatly that the Congressman would have to introduce some kind of legislation?

Mr. CRIDEN. I believe so, yes. But I knew as a fact—or, I knew, based upon some research that Mr. Cook or I had done; I do not recall what—that there was no such thing as a private immigration bill. (Conferring with counsel.)

Mr. WHEELER. Was it in your mind——

Mr. CRIDEN. If I might add, Mr. Weinberg periodically [24] told me to disregard anything Mr. Amoroso said—or, Mr. DeVito, as he was known in those days—that he was supposed to be somewhat the straight man in the act; he had to report back to the sheik, and that Mr. Weinberg on many occasions told both Mayor Errichetti and myself, "Don't pay any attention to Mr. DeVito."

Mr. WHEELER. How soon after you first met Mr. Weinberg did Mr. Weinberg first tell you that about Mr. DeVito?

Mr. CRIDEN. Probably when we were in Florida, right after—when we met Mr. Silvestri, I believe, and the Cavanaugh people, with regard to a casino venture that they had in Atlantic City. I would say in the middle of 1979, the summer of—I do not recall the exact date.

Mr. WHEELER. Well, is the event you are referring to the very first event of July 26, or July 25, 1979, or was it after that?

Mr. CRIDEN. Oh, no, it would have been after that. It would have been after Congressman Myers' meeting.

Mr. WHEELER. So, before Congressman Myers' meeting, Weinberg had not told you to disregard things that Tony DeVito said?

Mr. CRIDEN. Well, to get the time frame, Mr. Weinberg and I never had any direct contact with regard to bringing Congressmen to a meeting until sometime after Congressman Lederer's meeting took place. The first situation that I was [25] directly involved in related to Congressman Thompson. I do not believe that Mr. Weinberg knew I was even involved with Congressman Myers and Congressman Lederer at that time. (Conferring with counsel.)

The information that I had up until that time came to me via Mayor Erichetti.

Mr. WHEELER. All right. And you have just said that you recall that Mayor Erichetti did tell you that on or about August 8, that DeVito had said to him that the Congressman would have to introduce some kind of legislation.

Mr. CRIDEN. I do not recall the dates, because I met with Mayor Errichetti almost every couple of days.

Mr. WHEELER. In terms of whether the FBI knew you were involved with Mr. Criden, let me just inform you that at least by August 21 1979, which is the day before the Myers meeting, the FBI confidential documents indicate—they expressly state, in fact—that they were aware that it was through you and Mayor Errichetti that the meeting with Myers was set up. I will just provide you with that information.

Now, did you have a meeting on August 7, 1979, with Mayor Errichetti, Mr. Meiler, and Mr. Amoroso, in Cherry Hill, N.J.?

Mr. CRIDEN. I believe so.

Mr. WHEELER. And was the purpose of that meeting to [26] discuss an Atlantic City casino, some real property?

Mr. **Criden**. Yes.

Mr. **Wheeler**. Do you recall suggesting that the sheiks' representatives, and especially Mr. Amoroso, might want to consider making a payoff to someone in the Bahamas, or a certificate of deposit to use as a downpayment until the casino deal could be closed?

Mr. **Criden**. I do not think I made the recommendation. I remember the discussion. Mr. Meiler got rather upset about that kind of a discussion going on, and it terminated.

Mr. **Wheeler**. If you did not raise it, and Mr. Meiler got upset, who was it who raised that proposal?

Mr. **Criden**. I believe it was Mr. Weinberg.

Mr. **Wheeler**. Mr. Weinberg was there?

Mr. **Criden**. I believe so.

Mr. **Wheeler**. Do you recall anything more about the substance of that conversation?

Mr. **Criden**. No, I do not.

Mr. **Wheeler**. Was there any discussion at that meeting about politicians, other than the possibility of paying off someone in the Bahamas?

Mr. **Criden**. I do not recall—and I do not recall any discussion about paying off anybody in the Bahamas; to my recollection, I do not recall any such discussion.

Mr. **Wheeler**. What was it that Mr. Meiler got upset about?

[27] Mr. **Criden**. Something to do with some counterfeit bonds or counterfeit letters of credit or something of that nature.

Mr. **Wheeler**. After you heard about the interest of the sheiks and their representatives in meeting politicians from Mr. Errichetti on the flight on July 26, 1979, did you do anything about trying to contact politicians?

Mr. **Criden**. Yes.

Mr. **Wheeler**. What was the first thing you did?

Mr. **Criden**. Well, I spoke to Mr. Johanson about seeing if he could speak with Congressman Myers and Congressman Lederer, who I knew were friends of his.

Mr. **Wheeler**. You expressly raised Congressmen Myers and Lederer to him?

Mr. **Criden**. I do not know that I expressly raised it. I told him what Mayor Errichetti had related to me, asked him if he knew anybody, and he said that he would discuss it with Congressman Myers and Congressman Lederer.

Mr. **Wheeler**. Had you ever met Congressman Myers or Congressman Lederer before then?

Mr. **Criden**. No, sir.

Mr. **Wheeler**. What did Mr. Johanson tell you?

Mr. **Criden**. He said that he had a home down in Longport, Mr. Johanson, as to Congressman Myers and Congressman Lederer, and that he saw them over the weekends in that area **[28]** of the Jersey seashore, and that he would discuss it with them.

Mr. **Wheeler**. Did Mr. Johanson then get back to you?

Mr. **Criden**. Yes.

Mr. **Wheeler**. How much later?

Mr. **Criden**. I really do not know; maybe a week or two later.

Mr. **Wheeler**. And what did he tell you?

Mr. Criden. He said he discussed the matter with Congressman Myers, Congressman Myers said he would be more than happy to help Mr. Johanson, and anything he could do to be of assistance to him, he would be more than happy to do.

Mr. Wheeler. Did Mr. Johanson indicate to you that he had discussed with Congressman Myers Congressman Myers receiving some money for this?

Mr. Criden. I believe so, yes.

Mr. Wheeler. What did Mr. Johanson tell you in that regard?

Mr. Criden. I do not remember the exact conversation, but I think Mr. Johanson said to him that there would be something in it for him; if he went to the meeting, he would not have to do anything, he would not be obligated to do anything, but would just have to go along with the scenario, and that there would be some money in it for him.

Mr. Wheeler. Did you have any dollar number in mind at that time?

[29] Mr. Criden. Mr. Errichetti at that time had told me that there would be $100,000 paid for arranging the meeting.

Mr. Wheeler. Paid to whom?

Mr. Criden. I assumed that Mr. Errichetti was going to get the money and divide it up. I understood that $50,000 was to be paid to Congressman Myers and the balance of $50,000 would be divided between Mayor Errichetti and myself.

Mr. Wheeler. Just between the two of you?

Mr. Criden. Well, I had made arrangements with Mr. Johanson and Mr. Cook that they would share in the proceeds.

Mr. Wheeler. You made that arrangement beforehand?

Mr. Criden. Yes.

Mr. Wheeler. And what was the arrangement you had made with Mr. Cook and Mr. Johanson?

Mr. Criden. At that time, I do not think we had any specific arrangement, because I did not really think this thing was going to happen. I thought this was all just fantasy.

Mr. Wheeler. Did you have any understanding from any source that the money to be paid in connection with the payment to the Congressman would go to either Mel Weinberg or Tony DeVito?

Mr. Criden. Yes.

Mr. Wheeler. What was your understanding?

Mr. Criden. Mr. Errichetti indicated to me that he would [30] take care of Mr. Weinberg and Mr. DeVito.

Mr. Wheeler. When did Mr. Errichetti tell you that?

Mr. Criden. Prior to the meeting.

Mr. Wheeler. Prior to the meeting with Congressman Myers?

Mr. Criden. Certainly.

Mr. Wheeler. And when he said: "Take care of them," did he tell you what he meant by that?

Mr. Criden. No.

Mr. Wheeler. What was your interpretation of that?

Mr. Criden. I assumed that he was going to give some of the money to Mr. Weinberg or Mr. DeVito.

Mr. Wheeler. Did you have a similar understanding with respect to all of the subsequent Congressmen whose names you gave to Weinberg or DeVito?

Mr. CRIDEN. No.

Mr. WHEELER. You did not?

Mr. CRIDEN. No.

Mr. WHEELER. Did you have a similar understanding with respect to Congressman Lederer?

Mr. CRIDEN. No.

Mr. BEN-VENISTE. Could you repeat the predicate for that question?

Mr. WHEELER. Yes. The predicate is, did you have an understanding that some of the money to be paid to the [31] Congressmen would go to either Mel Weinberg or Tony DeVito?

Mr. CRIDEN. Some of the money that was being given to the Congressmen?

Mr. WHEELER. That is right.

Mr. CRIDEN. Not after that, no.

Mr. WHEELER. Only in connection with the Myers incident?

Mr. CRIDEN. Yes, sir [conferring with counsel]. I am sorry. In refreshing my recollection, I would say that on all the future ones, I was under the understanding that Mayor Errichetti was going to take care of Mr. Weinberg and Mr. DeVito out of his end, whatever that was, in each subsequent situation.

Mr. WHEELER. How does that differ from your understanding with respect to Mr. Myers?

Mr. CRIDEN. In the Myers situation, as Mayor Errichetti explained it to me, there was to be $100,000. Congressman Myers to get $50,000, and the balance of 50 was to be divided up, and Mayor Errichetti would then take care of Mr. Weinberg and Mr. Amoroso.

There were all different arrangements, all different understandings, in the other situations as they came about. But it was my understanding in all of them that Errichetti was going to take care of Weinberg and Amoroso somewhere along the line, with regard to each situation.

Mr. WHEELER. All right. Would you identify the names of [32] the public officials with respect to whom you had such an understanding?

Mr. CRIDEN. I did not have any understanding with a public official. Are you talking about a specific incident?

Mr. WHEELER. As to which public officials did you have that understanding?

Mr. CRIDEN. That would be Congressman Thompson, Congressman Murphy——

Mr. WHEELER. What about Congressman Lederer?

Mr. CRIDEN. Yes, Congressman Myers, Congressman Lederer, Congressman Thompson, and Congressman Murphy.

Mr. WHEELER. What about Congressman Murtha?

Mr. CRIDEN. I had no such understanding, because that never came about.

Mr. WHEELER. Well, how long before each of these meetings was it that Errichetti told you that he was going to take care of Weinberg and DeVito?

Mr. CRIDEN. It was never any such conversation at each particular meeting. It was always my understanding that Mayor Errichetti, as each one went down and I gave him some of the proceeds of each one, that he was going to take care of Weinberg and Amoroso.

Mr. CRIDEN. When did you obtain that understanding for the first time?

Mr. CRIDEN. I got that understanding prior to the [33] Congressman Myers situation.

Mr. WHEELER. And you got it from Mr. Errichetti?

Mr. CRIDEN. Yes.

Mr. WHEELER. Did you ever discuss it with Mr. Weinberg?

Mr. CRIDEN. No.

Mr. WHEELER. Did you ever discuss it with Mr. DeVito?

Mr. CRIDEN. No.

Mr. WHEELER. Why not?

Mr. CRIDEN. I was at that stage of the game just in the middle between Mayor Errichetti and Mr. Weinberg and Mr. DeVito and I just did not get involved in discussing any of those things with Weinberg and Amoroso.

Mr. WHEELER. Did there come a time when you tried to alter the nature of your relationship and insinuate yourself into the good graces of Weinberg and DeVito and cut out Errichetti?

Mr. CRIDEN. No—well, I do not know what you mean by cut out Mayor Errichetti. At one stage of the game, I said to Mr. Amoroso that I would like to be paid for bringing each Congressman to a meeting, regardless of what took place and he had agreed to that.

After the Lederer situation, Mr. Weinberg apparently had some dificulty contacting Mayor Errichetti directly, and then contacted me and started to go directly through me and sort of circumvented Mayor Errichetti. But I never circumvented [34] Mayor Errichetti.

Mr. WHEELER. And that difficulty you are talking about arose on or after September 19, 1979, which was the date of an incident which is referred to as the Mario Noto incident?

Mr. CRIDEN. Yes.

Mr. WHEELER. And Congressman Thompson and Congressman Murphy did not meet with Tony Amoroso or Tony DeVito and Mel Weinberg until October 1979; is that right?

Mr. CRIDEN. That is correct.

Mr. WHEELER. Well, before those meetings, before the Thompson and Murphy meetings, did there come a time when your understanding with respect to whether Mayor Errichetti would get a share of the payoff change?

Mr. CRIDEN. No, it did not change, except that Mayor Errichetti no longer dealt directly with Weinberg on all of these matters. After the Mario Noto incident, he dealt directly with me and made the arrangements for the various meetings directly with me. Mayor Errichetti was not involved, as far as they were concerned.

Mr. WHEELER. Once that began to happen, did it occur to you to talk to Weinberg about whether Weinberg and DeVito were still going to get taken care of by Errichetti?

Mr. CRIDEN. No [conferring with counsel]. It was my understanding, my reaction, at that stage of the game—I was still giving Mayor Errichetti money after each one of these [35] meetings—if he was taking care of Weinberg and Amoroso, that was fine. If there was a problem, I assumed that Weinberg and Amoroso would have come to me and said something to me. They having said nothing, the situation continued as is. What Mayor Errichetti did, I did not know and did not ask.

Mr. WHEELER. All right. The first two Congressmen whose names you said you obtained were through Mr. Johanson and those names were Myers and Lederer?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. Did there come a time when you obtained the name, or used the name, of another Congressman.

Mr. CRIDEN. Yes.

Mr. WHEELER. And who was the next Congressman whose name you——

Mr. CRIDEN. Thompson.

Mr. WHEELER. When did you raise Congressman Thompson's name, do you recall—about how much later?

Mr. CRIDEN. Maybe 30, 40 days after.

Mr. WHEELER. So it was after the Myers transaction?

Mr. CRIDEN. After the Lederer transaction.

Mr. WHEELER. And after the Lederer transaction.

In August, early August 1979, did you discuss with Mayor Errichetti the possibility of introducing to the sheiks' representatives two Congressmen from [deleted]?[1]

Mr. CRIDEN. It is possible, yes.

[36] Mr. WHEELER. And a Senator from [deleted]?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. Was it you who raised those names, or was it Mayor Errichetti?

Mr. CRIDEN. No; it was me.

Mr. WHEELER. And which two Congressmen from [deleted] did you have in mind?

Mr. CRIDEN. I believe one was named [deleted]. I do not recall the other Congressman's name, and I think the Senator was Senator [deleted].

Mr. WHEELER. Was the other Congressman [deleted]?

Mr. CRIDEN. Yes.

Mr. WHEELER. How did you obtain those three names?

Mr. CRIDEN. I spoke to a friend of mine, an attorney in Georgia, that I have been engaged in some legal matters with and asked him if he knew anyone, and he mentioned the two Congressmen and Senator [deleted], that were friends of his. Nothing further ever came—I never contacted either Senator [deleted] or the other two Congressmen.

Mr. WHEELER. What was the name of the lawyer in Georgia you contacted?

Mr. CRIDEN. Corbett Peek

Mr. WHEELER. Excuse me?

Mr. CRIDEN. Corbett Peek.

Mr. WHEELER. How do you spell that last name?

[37] Mr. CRIDEN. P-e-e-k.

Mr. WHEELER. How did you know Mr. Peek?

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[1] The omission of sensitive information in these hearings is identified by "[deleted]." For a complete explanation of why, see S. Rep. No. 97-682, 97th Cong., 2d Sess. V-VI (1982).

Mr. Criden. I had been involved in legal matters with Mr. Peek. We have been cocounsel in several situations.

Mr. Wheeler. How long had you known him?

Mr. Criden. Four or five years.

Mr. Wheeler. How many legal matters had you been involved with him on?

Mr. Criden. One client that he was cocounsel with me on, but the matter lasted over a period of several years.

Mr. Wheeler. When did you call Mr. Peek?

Mr. Criden. I would not have any independent recollection. Sometime in the summer of 1979.

Mr. Wheeler. Was it approximately the same time that you talked to Mr. Johanson about the possibility of Mr. Johanson contacting Myers and Lederer?

Mr. Criden. Somewhere in that period of time; yes.

Mr. Wheeler. Did you call Mr. Peek on the telephone, or did you meet with him?

Mr. Criden. No, I called him on the telephone.

Mr. Wheeler. And what did he tell you about Congressmen [deleted]?

Mr. Criden. Just that they were friends of his, and that he could arrange an appointment with them, that he knew Senator [deleted] and he knew the other two Congressmen fairly well.

[38] Mr. Wheeler. What was it that you asked Mr. Peek in this instance?

Mr. Criden. If he could arrange an appointment with the Congressmen and the Senator and whether they would be interested in helping a client of mine with substantial wealth in the Mideast. I never went into any specific details or particulars with them, and I never did anything further with regard to that.

Mr. Wheeler. Did you ever discuss these three names with Mayor Errichetti?

Mr. Criden. I believe I may have, yes.

Mr. Wheeler. And when you discussed these three names—when you raised the three names, did he give you any indication that he knew who these three people were?

Mr. Criden. Well, he knew who they were, but he did not know them, personally.

Mr. Wheeler. If I told you that there is a transcript of a conversation between Mayor Errichetti and Mel Weinberg and Tony DeVito, dated August 7, 1979, in which he raised those three names, would that refresh your recollection as to whether you talked with Mr. Errichetti about those three individuals on or before that date, August 7, 1979?

Mr. Criden. Well, I do not have any doubt in my mind that I mentioned them to Mayor Errichetti. What Mayor Errichetti said about them or did about it, I do not have any independent [39] knowledge of. What he said to Mr. Weinberg or Mr. DeVito, I do not know.

Mr. Wheeler. When Mr. Peek told you that he would—well, let me make sure I understand. Did Mr. Peek tell you that he would, in fact, set up a meeting with each of these three individuals for you?

Mr. Criden. Yes, if I wanted to, yes.

Mr. **Wheeler**. What did you tell him?

Mr. **Criden**. I said I would be back to him.

Mr. **Wheeler**. Did you get back to him?

Mr. **Criden**. No.

Mr. **Wheeler**. Why not?

Mr. **Criden**. I do not know. I just got involved with the Thompson matter and just never got back to him.

Mr. **Wheeler**. Did either Mr. Amoroso, Mr. Weinberg, or Mr. Errichetti ever indicate to you that they were not interested in any of those three people?

Mr. **Criden**. No. Almost all my discussions in this regard were with Mr. Weinberg. He pressed me a couple of times about Senator [deleted].

Mr. **Wheeler**. In other words, he indicated that they were interested in Senator [deleted]?

Mr. **Criden**. Yes.

Mr. **Wheeler**. And did he indicate anything with respect to [deleted]?

[40] Mr. **Criden**. No.

Mr. **Wheeler**. Did you ever raise those names, [deleted], with Mel Weinberg?

Mr. **Criden**. I do not recall.

Mr. **Wheeler**. Do you recall ever talking to Mr. Weinberg about two [deleted] Congressmen?

Mr. **Neal**. If I may interrupt——

Mr. **Wheeler**. Yes.

Mr. **Neal**. Mr. Weinberg, you——

Mr. **Ben-Veniste**. Mr. Criden.

Mr. **Criden**. Wrong one, Mr. Neal. Not one of my favorite people, Mr. Neal.

Mr. **Neal**. Mr. Criden, you said they passed this information on to Mr. Errichetti?

Mr. **Criden**. About the two Congressmen and Senator [deleted]?

Mr. **Neal**. Right.

Mr. **Criden**. Yes, sir.

Mr. **Neal**. Did you talk with Mr. Weinberg about these people?

Mr. **Criden**. I do not recall talking to Mr. Weinberg about them.

Mr. **Neal**. Neither one of them—neither the two Congressmen or Senator [deleted]?

Mr. **Criden**. Talk to Mr. Weinberg about the three **[41]** gentlemen?

Mr. **Neal**. Yes.

Mr. **Criden**. I may have, but I do not recall.

Mr. **Neal**. You do not recall talking to Mr. Weinberg about these three?

Mr. **Criden**. I may have.

Mr. **Neal**. But you do not recall it now?

Mr. **Criden**. I do not recall at this moment, no.

Mr. **Neal**. Did you tell Mr. Errichetti that they would take money and would assure asylum for Habib?

Mr. **Criden**. No.

Mr. **Neal**. You did not tell him that?

Mr. **Criden**. I do not believe so, no.

Mr. NEAL. Did you tell them that Senator [deleted], for $100,000, and Mr. [deleted] for $50,000 would assure asylum for Habib?

Mr. CRIDEN. I do not recall saying that to Mayor Errichetti. The only thing I said was that I possibly could arrange a meeting with Mr. Weinberg and Mr. Amoroso with Senator [deleted] and the two Congressmen from [deleted].

Mr. NEAL. And that is all you said to Mr. Errichetti?

Mr. CRIDEN. I believe so, yes. [Conferring with counsel.]

Mr. NEAL. Do you have any knowledge--

Mr. CRIDEN. Pardon, sir?

Mr. NEAL. Are you through with your answer?

Mr. CRIDEN. Yes, sir.

[42] Mr. NEAL. Do you have any knowledge, either from Mr. Errichetti or from Mr. Weinberg, what Mr. Errichetti may have said to Mr. Weinberg about those gentlemen?

Mr. CRIDEN. I have no independent knowledge of that, sir.

Mr. NEAL. Were you aware, or have you been aware since this, that there is a document in the files of the FBI that says, "Mr. Errichetti has arranged separate meetings in Washington, D.C. with Senator [deleted], Congressman [deleted], and Mario Noto, and according to Mr. Errichetti, [deleted] for $100,000, and [deleted] for $50,000, each, will assure asylum for Mr. Habib?"

Mr. CRIDEN. I am not aware of that memorandum.

Mr. NEAL. If Mayor Errichetti passed that on to the FBI, as the FBI records reflect, did you get any information on which he would base this statement?

Mr. CRIDEN. Just that I could arrange a meeting with Senator [deleted] and the two Congressmen from [deleted].

Mr. NEAL. Well, by this time, though, we are talking about September 1979, mid-September 1979. Was there some sort of an understanding between you and Mr. Errichetti that if you said, "I can arrange a meeting," that everybody understood that there was going to be money behind it?

Mr. CRIDEN. No, sir.

Mr. NEAL. So, what you are telling us, Mr. Criden, is that, based on your statement to Mr. Errichetti that you could [43] arrange a meeting with Senator [deleted], Congressman [deleted], and Congressman [deleted], that from that flows documents in the FBI files, stating that these gentlemen would take bribes to assure asylum, and requesting approval to make those bribe offers; you said no more?

Mr. CRIDEN. I cannot tell you what Mayor Errichetti said. I can only tell you what I told Mayor Errichetti.

Mr. NEAL. And there was no key or buzz word, saying, "Arrange a meeting" is the same thing as saying they will take money to quarantee asylum?

Mr. CRIDEN. No. [Conferring with counsel.]

Mr. NEAL. Do you know——

Mr. BEN-VENISTE. One moment, Mr. Neal.

Mr. CRIDEN. Mr. Neal, I would like to point out to you that I personally did not know any of these gentlemen—Senator [deleted] or the two Congressmen. I was just trying to obtain as many names and connections as possible and then seeing where the chips fell.

Mr. NEAL. OK, we are trying to understand here what went on. What you are saying is you knew a Mr. Peek———

Mr. CRIDEN. Yes, sir.

Mr. NEAL [continuing]. And you asked Mr. Peek if he could line up a meeting with you, with these gentlemen he mentioned?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. Senator [deleted] and the two Congressmen?

[44] Mr. CRIDEN. Correct.

Mr. NEAL. And he said he could line up meetings?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. And you tell Mr. Errichetti simply that?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. And then, there are documents in the files of the FBI that say that Errichetti says that for $100,000, Senator [deleted], and for $50,000, Congressman [deleted], each, will assure asylum for Habib. And that is the only information that you passed on to Mr. Errichetti?

Mr. CRIDEN. I told Mayor Errichetti that I could possibly arrange a couple of appointments with Senator [deleted] and the two Congressmen from [deleted], and see where we went from there.

Mr. NEAL. Did you ever tell Mr. Errichetti anything else about these gentlemen?

Mr. CRIDEN. No, sir.

Mr. NEAL. Did you ever tell them that Congressman [deleted] was no longer interested—or, Senator [deleted] was not interested—because he said [deleted].

Mr. CRIDEN. I do not recall that, sir, no.

Mr. NEAL. Well, would it surprise you if the FBI documents and information reflect that that is the reason that did not go through, because you or Mr. Errichetti said that Senator [deleted] said that [deleted] [45] now, and I had better not do this right now?"

Mr. CRIDEN. I do not know how I could have said that, because I never spoke to Senator [deleted].

Mr. NEAL. Well, did Mr. Peek tell you that?

Mr. CRIDEN. Mr. Peek indicated to me that any time I wanted to arrange a meeting with Senator [deleted] or the two Congressmen, he could arrange it.

Mr. NEAL. And that is all?

Mr. CRIDEN. To the best of my recollection, that is all.

Mr. NEAL. Did you ever tell Mr. Errichetti that Congressman [deleted] did not want to go through this now because his wife had died?

Mr. CRIDEN. I may—now that you mention that———

Mr. Neal. Does that surprise you?

Mr. CRIDEN. No; that does not surprise me, because I think that Mr. Peek said to me that he did not want to get in touch with Congressman [deleted] because he had recently had a death in the family, and he did not want to disturb him at this particular time, and I may have said that, probably did pass that on to Mayor Errichetti.

Mr. NEAL. Was this after he told you he would arrange the promise of a meeting, or was this during your first conversation with Mr. Peek?

Mr. CRIDEN. No; this would be a second conversation.

Mr. NEAL. Subsequent. So, you had a conversation first [46] with Mr. Peek in which he said he would arrange the meeting with these three?

Mr. CRIDEN. Right.

Mr. NEAL. Then later on, as to Congressman [deleted], he said to you, "I do not want to contact Congressman [deleted] now; he has had a death in the family?"

Mr. CRIDEN. Correct.

Mr. NEAL. You passed that on to Mr. Erichetti?

Mr. CRIDEN. Correct.

Mr. NEAL. Did you pass the first thing on with respect to Senator [deleted]—did you pass that on, that he said he [deleted] and did not want to——

Mr. CRIDEN. I do not recall that Mr. Peek ever spoke to Senator [deleted] that I am aware of.

Mr. NEAL. Well, whether he spoke to him or not, did Mr. Peek ever tell you what I just said that Mr. [deleted] said?

Mr. CRIDEN. Not to my recollection, Mr. Neal.

Mr. NEAL. OK.

Senator INOUYE. Would you yield?

Mr. NEAL. Yes

Senator INOUYE. I am just curious—you said that you could arrange meetings with these three gentlemen——

Mr. CRIDEN. Yes, sir.

Senator Inouye [continuing]. And that is all you said?

Mr. CRIDEN. That is right.

[47] Senator INOUYE. And then you said, and I quote, "and see where we go from there." What did you mean by that?

Mr. CRIDEN. Well, my view at that time was that if I went in to see anyone——

Senator INOUYE. This is what you told Errichetti?

Mr. CRIDEN [continuing]. No, this is my state of mind at the time, because I did not go into any details with Mr. Errichetti.

Senator INOUYE. What did "see where we go from there" mean?

Mr. CRIDEN. Well, I would have hopefully had an appointment with one of these gentlemen, or all three, or whatever, and discussed the situation with them, and explained to them what had to be done, and see what would happen if they would be willing to go along——

Senator INOUYE. Go along with what?

Mr. CRIDEN [continuing]. With meeting with Mr. DeVito and Mr. Weinberg, who at that time, who at that time were purported to be representatives of the sheik.

Senator INOUYE. And no money was ever discussed?

Mr. CRIDEN. I never had the meeting.

Senator INOUYE. But in your mind, was money an element?

Mr. CRIDEN. Well, I did not know at that time, really. I figured I would see how it went along, and maybe I would ask Mr. [deleted] to be the intermediary with regard to that, but it never got to that.

[48] Senator INOUYE. And you were doing all of this for your client?

Mr. CRIDEN. I was doing all of this primarily to see whether or not I could get my particular client's venture financed in Atlantic City, because that was the string that they kept dangling to me, that they were going to, any day now, get the approval from London, and we could get started on the financing arrangements in the Atlantic City casino operation. And to me that meant a substantial fee, somewhere in the neighborhood of $3 million to $5 million, because that would be the contingent arrangement that I had had with my client.

Senator Inouye. Thank you.

Mr. Wheeler. Mr. Criden, let me see if I can refresh your recollection a little bit with respect to these gentlemen. On September 18, 1979, the documents indicate—I have a transcript here in front of me that I will be willing to share with you and your counsel—you had a conversation with Melvin Weinberg that was recorded, and the transcript reads in part as follows:

> Howard Criden. Would you like some Governors?
>
> Melvin Weinberg. Yeah, why not?
>
> Criden. Congressmen, Senators, Governors. What else?
>
> Weinberg. Any guy in Washington would make these (inaudible) happy as a lark.
>
> Criden. Oh, I got a dozen different guys. I'd want to [49] make sure that the guys will play, OK? I know dozens of guys, but I don't know, some of them you can talk to, some of them, you can't.
>
> Weinberg. Yeah.
>
> Criden. I mean, first place, when you lay the story on a guy, he don't believe it, OK, because right away, he thinks he's being summoned, talking cash, someone is trying to middle or something like that. He's got to do it with somebody he trusts implicitly, otherwise he ain't going to do it, OK?

And then on the next page of this transcript—I am sorry, two pages later:

> Weinberg. All right, so line them up. Unfortunately, these things happen. I understand [deleted] wants to think it over.
>
> Criden. This thing hit [deleted]. Right now, he is, uh, you know (inaudible). Not that he won't do the number, so, uh, he just thinks the [deleted].
>
> Weinberg. All right.
>
> Criden. Right. Now—and I can understand.
>
> Weinberg. Whenever he wants.
>
> Criden. I can understand that.
>
> Weinberg. And, uh, [deleted]?
>
> Criden. Had a death in the family.
>
> Weinberg. His wife?
>
> Criden. No, I don't know if it was his wife or somebody [50] very tight with him, on some—no, in his family, his mother, or his father, somebody passed away.

And then, Mr. Criden, on September 26, 1979, in another recorded conversation with Mel Weinberg:

> Howard Criden. Now, hold off. I think I'm trying to do [deleted] next week.
>
> Weinberg. OK. Well, [deleted], we can go to the old way, right?
>
> Criden. I may want to change. I may want to change [deleted] to the new way, unless you have a strong objection.
>
> Weinberg. Well, if we can go the old way, let it the old way.

Does that refresh your recollection that you did talk to Melvin Weinberg about money and about a possible bribe of Congressman [deleted] and Senator [deleted]?

Mr. Criden. Well, it refreshes my recollection that I did discuss it with Mr. Weinberg; yes. But let me just add that when we are talking about the old way or the new way, that related to the fact that I had requested that the Congressmen not accept any money directly from Mr. Weinberg and Mr. Amoroso, and he had agreed to that, so that there would be no money passed directly from Mr. Weinberg and Mr. Amoroso to the Congressmen.

Mr. Wheeler. And the new way, in fact, was for the money to be passed to you, in their presence?

[51] Mr. Criden. That is correct.

Mr. Wheeler. In their presence?

Mr. Criden. Not necessarily in their presence, but just given to me, and then I would make the appropriate arrangements after that. What I did with it was my concern.

Mr. Wheeler. When you discussed it with Mr. Weinberg, didn't, in fact, he agree that the new way would be OK, as long as the money was passed in their presence?

Mr. Criden. It is possible, yes.

Mr. Wheeler. All right. So you did talk to Mr. Weinberg about the passage of money, either to or in the presence of Congressman [deleted], Congressman [deleted], and Senator [deleted]?

Mr. Criden. I do not know that Congressman [deleted] name was mentioned in that, but in any event, I may have had that conversation, but most of that conversation was pure puffing on my part. Remember, at this time, I would have done almost anything within reason in order to continue and hope to get my project financed. I would have told them almost anything.

Mr. Neal. What do you mean within reason?

Mr. Criden. Well, I mean, in the context of this scam, so to speak, when I say that I can produce Governors—pure, unadulterated puffing on my part.

Mr. Wheeler. Well, did you expect that you could puff and not produce, and that that would somehow influence them?

[52] Mr. Criden. Well, I had produced at that stage of the game.

Mr. Wheeler. What had you produced?

Mr. Criden. Well, I believe I had produced Congressman Thompson——

Mr. Wheeler. Not in September 1979, you hadn't.

Mr. Criden. No, but I had produced—well, I do not know whether they were aware or not, but I had produced Congressman Myers and Congressman Lederer through my efforts.

Mr. Wheeler. But you were not aware of that, so in your mind, you did not know that they knew you had produced anybody at that time.

Mr. Criden. That is correct.

Mr. Wheeler. So your puffery was not going to be worth anything unless you did produce?

Mr. Criden. Right, but I had hoped somewhere along the line, perhaps, that I would produce, which I ultimately did.

Mr. Wheeler. I am sorry, I did not hear you.

Mr. Criden. I said, I had hoped that somewhere along the line, I would produce somebody.

Mr. Wheeler. Congressman [deleted]?

Mr. Criden. No.

Mr. Wheeler. Senator [deleted]?

Mr. Criden. I never spoke to any of those three gentlemen, [53] and never pursued any of those any further.

Mr. Wheeler. Why didn't you?

Mr. Criden. I do not know. I just had a feeling that—I just did not pursue it.

Mr. **Wheeler**. Even though Weinberg asked you to pursue them?

Mr. **Criden**. Yes.

Mr. **Wheeler**. And this was before Congressman Thompson, so you were not so busy with Congressman Thompson that that explains why you did not pursue these gentlemen.

Mr. **Criden**. I just did not pursue it.

Senator **Rudman**. I would just like you to yield for a moment. Before we leave this line of questioning in this transcript, I know that in your answer to Senator Inouye, you were discussing your state of mind, which is important for several different reasons to what we are doing here.

This particular part of the transcript, quoting you to Weinberg in this reported conversation:

> Oh, I got a dozen different guys. I want to make sure that the guys will play. OK. I know dozens of guys, but I don't know if some of them—you can talk to some of them, some you can't.

What do you mean by make sure that the guys will play, and what did you mean by, can talk? You did not mean talk, obviously—can talk to some, and some you can't. What did [54] you mean by that, Mr. Criden?

Mr. **Criden**. I assume what I meant by it at the time was whether or not they would go along with the scenario, as proposed by Mr. Weinberg, that they would have to make certain assurances and commitments that he had requested be made by the various public officials that they wanted to arrange the meetings with.

Senator **Rudman**. So, although it was puffery about being able to produce all these people, it certainly was not puffery—it was a statement of what was going on, when you talked about play, and not playing; is that correct?

Mr. **Criden**. I was just putting him on, trying to sound important to Mr. Weinberg.

Senator **Rudman**. And you, at this point, are telling us that you still thought that it was just to produce people, that no illegality was being contemplated?

Mr. **Criden**. Yes, sir.

Senator **Rudman**. Mr. Criden, that is very hard to believe——

Mr. **Criden**. I understand that, Senator—as you look back on it in retrospect, I know it is very difficult to understand. But as this thing developed, in my mind, No. 1, they kept talking abut a private immigration, which in my research, I had determined that there was no such thing. I did not really think [55] they knew what the heck they were doing, these two guys, because they were trying to scam the sheik, their so-called client. I was primarily interested in getting my project approved, which would have meant a substantial amount of a legal fee for me.

Senator **Rudman**. Well, I think we understand that, but what I do not quite understand is your last answer. When that transcript indicates you are telling Weinberg that "some will play and some won't play," you are talking about illegal conduct on the part of Congressmen and Senators. Just answer that "Yes" or "No," and then explain.

Mr. **Criden**. I do not know what you mean by—in terms of "illegal." Do you mean in terms of bribery?

Senator **Rudman**. Yes; I am. That is precisely——

Mr. **Criden**. OK. I did not understand it to be bribery at that time.

Senator **Rudman**. Well, what did you understand it to be?

Mr. **Criden**. My understanding was that they were never going to be called upon to do anything.

Senator **Rudman**. Well, that may be so, Mr. Criden, but you are saying to Weinberg: "Some of these people that I can produce will play, and some won't play, and I want to make sure which I can talk to." Now, that certainly is some kind of illegal conduct you are talking about, is it not, Mr. Criden?

[56] Mr. **Criden**. Play, in my mind, meant to go along with the scenario that Mr. Weinberg proposed would have to take place at the time that each meeting took place.

Senator **Rudman**. How long have you practiced law, Mr. Criden? Quite some time?

Mr. **Criden**. Quite some time.

Senator **Rudman**. About how long?

Mr. **Criden**. Twenty-five years.

Senator **Rudman**. What was the character of your practice?

Mr. **Criden**. Civil.

Senator **Rudman**. Civil?

Mr. **Criden**. Commercial, real estate.

Senator **Rudman**. A successful practice?

Mr. **Criden**. Yes, sir.

Senator **Rudman**. Just without giving us specifics, what range did you earn over the last 5 years?

Mr. **Criden**. $75,000 to $100,000 a year.

Senator **Rudman**. And yet, you are telling us that with all that was going on in your mind, you were being paid money to produce people, but that that was it, that there was no illegality in terms of what was going on?

Mr. **Criden**. I was paid money to produce people, and I did receive money just to produce people.

Senator **Rudman**. It never crossed your mind that there [57] were laws being broken?

Mr. **Ben-Veniste**. Senator——

Senator Rudman. Mr. Ben-Veniste?

Mr. **Ben-Veniste**. May I interject only—and without trying to detract either from the incredulity that the Senator has expressed, which I share, having gone through the same course in reviewing this when I became involved in representing Mr. Criden, but only to put in context Mr. Criden's earlier remarks as corroborated by the remark to Mrs. Rush, which Mr. Wheeler brought out, that he did recognize that there was something here that was improper, that he may have been involving himself in a conspiracy that involved illegality, and Mr. Criden has testified that in his mind, that illegality was in the nature of a fraud possibly on the employer of Amoroso and Weinberg. But in terms of the bribery, his response on that question, you have. It may have been erroneous, but Mr. Criden is testifying to his state of mind at that time.

Senator **Inouye**. Will the Chairman yield at that point?

Senator **Rudman**. Yes.

Senator Inouye. On this word, "play," as far as you were concerned, you did not expect Members of Congress to be involved in any illegality?

Mr. Criden. No, sir.

Senator Inouye. Now, you expected Congressmen who were [58] absolute strangers to you to respond to your call, to meet these strange people from the Middle East, and do this as a favor to you, a stranger?

Mr. Criden. Well, Senator, I did not go directly to the particular Congressmen involved. I went through an intermediary, somebody that I called that could get me an introduction. For example, in the [deleted] situation, I called this Mr. Peek, who was a friend of mine, to ask——

Senator Inouye. But you were the one to meet——

Mr. Criden. Yes, but Mr. Peek would have called if the situation had developed, the various Congressmen, and arranged an appointment on my behalf.

Senator Inouye. In other words, if I were one of those named, you would expect me to leave my family here in Washington, travel to [deleted] ——

Mr. Criden. No, sir.

Senator Inouye [continuing]. To meet some strange sheik for money?

Mr. Criden. No, no, sir. All the meetings took place here in Washington at the W Street residence that Mr. Weinberg and Mr. Amoroso said was the sheik's residence here in Washington.

Senator Inouye. And you would expect me, or someone you had never met before in your life, to say, "OK to you, Mr. Criden. I do not know who you are, but fine, I will meet the sheik, whoever he is?"

[59] Mr. Criden. It may be incredible, Senator, but it happened.

Senator Inouye. Thank you.

Mr. Wheeler. Mr. Criden, you said that all the meetings occurred in the W Street townhouse?

Mr. Criden. Well, the two meetings after the Myers and the Lederer incident occurred at the W Street. Congressman Thompson and Congressman Murphy's meetings took place—well, Congressman Murphy's took place at the Hilton Hotel, but there was a subsequent meeting that took place at W Street.

Mr. Wheeler. So, Senator Inouye's description with respect to Myers and Lederer is accurate; they were asked to fly to Washington?

Mr. Criden. Later New York, yes. But I was not involved at that time, directly. Mayor Errichetti made those particular arrangements.

Mr. Wheeler. In the same conversation on September 18, 1979 with Mr. Weinberg, Mr. Criden, this dialog occurs:

> Weinberg. You know, Angie's got two problems. One's his daughter, and the other is his wife. And he does things sometimes, and I jump on him.
>
> Criden. What does he do?
>
> Weinberg. Ah, he went and he bought her a car for $16,000 cash, you know.
>
> Criden. Yeah, that's not a smart move.
>
> [60] Weinberg. [Inaudible] money away.
>
> Criden. Exactly.

WEINBERG. You know, use his head. He only makes $30,000 a year. How can he——

And then it becomes inaudible.

Now, you said, "That's not a smart move" for Errichetti to spend $16,000 in cash on a new car for his wife. Why didn't you think that was a smart move?

Mr. CRIDEN. Well, for somebody who makes $30,000 a year to spend $16,000 cash on an automobile just did not seem to me to be a very clever thing to do. But I did not know Mayor Errichetti until the day we flew down to Florida together, and I did not know anything about his situation or whether he spent $16,000 for an automobile for his daughter or not.

Mr. WHEELER. But isn't the reason that you thought that wasn't smart was because you knew that that reflected illegal money in Errichetti's possession?

Mr. CRIDEN. Probably that was what went through my mind, but I did not know anything about Mayor Errichetti. I did not know whether he bought a $16,000 automobile or not. It was Mr. Weinberg telling me that, and I said it would not be a smart move to do, from a tax point of view.

Mr. WHEELER. In that same conversation with Mr. Weinberg, you and Mr. Weinberg discussed "two guys in [deleted] ", that is all—they are not identified by name. Who were the two guys in [deleted] you were talking about?

[61] Mr. CRIDEN. Nobody in particular. I had called a lawyer friend of mine in [deleted] and asked him if he could arrange an appointment and would make—if he knew any Congressmen in the [deleted] area that I could arrange an appointment with. He said he knew several, and that was the end of the conversation. I never got back to him.

Mr. WHEELER. Now, on Congressman Lederer, his meeting occurred on September 11, the meeting at which money was transferred. Did you talk to Congressman Lederer before that meeting?

Mr. CRIDEN. No, sir.

Mr. WHEELER. At any time?

Mr. CRIDEN. Oh, I picked up Congressman Lederer at the airport with Mr. Johanson and drove him to the hotel.

Mr. WHEELER. Was that the first time you had ever met Mr. Lederer?

Mr. CRIDEN. The first time I had ever met Mr. Lederer.

Mr. WHEELER. Did Mr. Johanson tell you before that that he had talked with Mr. Lederer?

Mr. CRIDEN. Yes.

Mr. WHEELER. Just on the one occasion back, right after July 26?

Mr. CRIDEN. Well, I could not recall the date, but he said that he had spoken to Mr. Lederer, and Mr. Lederer would [62] be more than happy to go to a meeting.

Remember one other thing, gentlemen, that at all times, every single meeting was prefaced by the fact that Mr. Weinberg and Mr. DeVito, via their client, the sheik, was going to make substantial contributions in the Congressman's district—create jobs in the Congressman's district and do anything that they could to assist the Congressman in creating industry or whatever, and this was an additional thing that was waved in front of each Congressman.

Mr. WHEELER. All right, but as of September 11, 1979, the date on which money was transferred in Mr. Lederer's possession, what was your understanding as to how many conversations he had had with Mr. Johanson about this matter?

Mr. CRIDEN. One or two.

Mr. WHEELER. And how about with Mr. Lederer and Mr. Errichetti?

Mr. CRIDEN. Well, Mr. Lederer and Mr. Errichetti did not know each other until the afternoon of the meeting.

Mr. WHEELER. Of September 11?

Mr. CRIDEN. Yes. They met for the first time in the lobby of the hotel.

Mr. WHEELER. And had Mr. Weinberg met Mr. Lederer before then, to your knowledge?

Mr. CRIDEN. Not to my knowledge.

Mr. WHEELER. So that the only thing that Mr. Lederer [63] knew when he arrived on September 11 was what Mr. Johanson had told him?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. And what was your understanding as of September 11, before the meeting, of what Mr. Johanson had told Mr. Lederer?

Mr. CRIDEN. That he was taking him to meet the representatives of the sheik, that they were interested in meeting Mr. Lederer with a view toward creating some jobs in Mr. Lederer's district, and for Mr. Lederer to be of some assistance to the sheik in the event that he ever wanted to come to the United States; and that Mr. Lederer told Mr. Johanson he did not want any money of any kind, that he would be more than happy to do this for Mr. Johanson and if it would help him, he would be more than happy to do it.

Mr. WHEELER. What do you mean, "for Mr. Johanson?" What was Mr. Johanson——

Mr. CRIDEN. Well, Mr. Johanson apparently must have told him that he was going to receive a fee for this, and Congressman Lederer said great, if he could help him, fine.

Mr. WHEELER. And did Mr. Johanson, to your knowledge, tell Mr. Lederer that Mr. Lederer would be asked to come on strong and make various commitments to do things on behalf of the sheiks?

Mr. CRIDEN. I don't think that Mr. Johanson told Mr. [64] Lederer that. I think Mayor Errichetti, based upon my information, told Congressman that, to come on strong.

Mr. WHEELER. When did Mayor Errichetti tell that. in your understanding?

Mr. CRIDEN. Prior to the meeting.

Mr. WHEELER. Immediately prior to the meeting?

Mr. CRIDEN. Yes.

Mr. WHEELER. And Congressman Lederer went to the meeting having been told that?

Mr. CRIDEN. Yes.

Mr. WHEELER. Now, on September 19, 1979, was the Noto incident that we referred to a few minutes ago.

Mr. CRIDEN. Yes.

Mr. WHEELER. Would you explain the full background of the Noto incident?

Mr. CRIDEN. Well, Mayor Errichetti told me that Mr. Weinberg had told him that he needed to produce somebody from Immigration—it did not necessarily have to be anybody; it could be anybody—and that——

Mr. WHEELER. Anybody from Immigration?

Mr. CRIDEN. No, not even necessarily from Immigration, but that Mr. Amoroso was not to be told about this situation, and that this was to be a play, and they were to go through this charade, and that Mr. Errichetti would receive $50,000 for having set up this meeting, and that Mr. Weinberg was fully [65] aware of this, and all this was a way to get some money out of the sheik.

Mr. WHEELER. When did Errichetti tell you this?

Mr. CRIDEN. A couple of weeks prior to the meeting.

Mr. WHEELER. Was it before the Lederer transaction?

Mr. CRIDEN. I could not recall.

Mr. WHEELER. All right. When Errichetti told you this, what did you do or say?

Mr. CRIDEN. Well, I said I did not know anybody in Immigration, and he said, "Well, it doesn't make any difference. Let's get anybody, because Weinberg doesn't care. He just wants to go through with this to satisfy Amoroso—or DeVito—and the shiek. And just let's get a body."

Mr. WHEELER. What did you do then?

Mr. CRIDEN. Well, I said, "Why don't you use one of your fellows?" And he said he didn't have anybody, and then I suggested that maybe Mr. Cook could do this, and he arranged a meeting between myself and Mr. Cook. And he took one look at Mr. Cook, and he said, "You'll do."

Mr. WHEELER. So Errichetti knew that Mr. Cook was not someone from Immigration?

Mr. CRIDEN. Oh, sure.

Mr. WHEELER. And he knew that Mr. Cook was your partner?

Mr. CRIDEN. Yes.

[66] Mr. WHEELER. Then what happened?

Mr. CRIDEN. Then Mr. Cook went down with Mayor Errichetti for the meeting, and apparently—I was not at the meeting—apparently, Mr. DeVito knew that Mr. Cook was not who he purported to be, and so the meeting broke up, and nothing ever took place, and then there was a big hassle about, as they call bringing in a ringer.

Mr. WHEELER. Did you ever tell either Mel Weinberg or Tony DeVito that Ellis Cook was your law partner?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Did you ever gain any understanding of who they thought Ellis Cook was?

Mr. CRIDEN. No.

Mr. WHEELER. Did you ever talk to Errichetti about the incident?

Mr. CRIDEN. Oh, sure.

Mr. WHEELER. And what was the nature of that conversation?

Mr. CRIDEN. Well, he just passed it off as being a foulup, and just said, "Let's forget about it"; that's all.

Mr. WHEELER. Let me ask you this. We have now talked about the three Congressmen from [deleted]. We have talked about two unnamed people from [deleted]. We have talked about, as of that point in time, in late August or early September, Congressman

Myers and Congressman Lederer. Did you raise any **[67]** other politician's name, any other public official's name?

Mr. CRIDEN. I think I mentioned Congressman [deleted] to them.

Mr. WHEELER. When did you mention Congressman [deleted] name?

Mr. CRIDEN. Sometime in the latter part of 1979.

Mr. WHEELER. In September—after the Noto incident?

Mr. CRIDEN. Yes.

Mr. WHEELER. What did you tell Mel Weinberg or Tony DeVito about Congressman [deleted]?

Mr. CRIDEN. I believe I told them that I could arrange an appointment with Congressman [deleted].

Mr. WHEELER. Had you already talked to Congressman [deleted] at that time?

Mr. CRIDEN. I believe I spoke to Congressman [deleted], a gentleman by the name of Mr. Crowter, I believe.

Mr. WHEELER. Crowter?

Mr. CRIDEN. Crowter.

Mr. WHEELER. How did you get Mr. Crowter's name?

Mr. CRIDEN. Through an attorney friend of mine in [deleted].

Mr. WHEELER. Who was your friend in [deleted]?

Mr. CRIDEN. I think it was Mr. Whittington.

Mr. WHEELER. How did you know Mr. Whittington?

Mr. CRIDEN. I had been involved in a legal matter with **[68]** him.

Mr. WHEELER. Did you call Mr. Whittington?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. What did you say to him?

Mr. CRIDEN. The same thing I told Mr. Peek, that if he knew any Congressmen [deleted] that I could arrange an appointment with, that I had a sheik who had substantial interest who would make a substantial contribution, or make a contribution to the Congressman's campaign, and he could make a fee if we could arrange a meeting; that the sheik would make some major investments in the Congressman's district.

Mr. WHEELER. What did Whittington say to you?

Mr. CRIDEN. He said that he knew Mr. Crowter, who was Congressman [deleted]—he was an attorney, Mr. Crowter; I think he was Congressman [deleted] financial campaign treasurer—and asked me to call Mr. Crowter, and he apparently spoke to Mr. Crowter first, to alert him that I would be calling, and I had a discussion with—I called Mr. Crowter and asked if I could make an appointment to see Congressman [deleted], and he said, "Certainly."

Mr. WHEELER. And did you make an appointment?

Mr. CRIDEN. Yes, I did.

Mr. WHEELER. For what date?

Mr. CRIDEN. I do not remember the exact date. It was the date that Congressman Thompson went to the W Street house.

[69] Mr. WHEELER. October 9, 1979?

Mr. CRIDEN. Yes.

Mr. WHEELER. Was that meeting to be in Washington with Congressman [deleted]?

Mr. CRIDEN. Yes.

Mr. **Wheeler**. When you raised Congressman [deleted] name—did you raise it with Mel Weinberg, directly?

Mr. **Criden**. I believe so.

Mr. **Wheeler**. What did you tell him about Congressman [deleted]?

Mr. **Criden**. I said that I thought I could arrange an appointment with Congressman [deleted].

Mr. **Wheeler**. For what purpose?

Mr. **Criden**. The same purpose as all the other meetings.

Mr. **Wheeler**. Did you discuss the transfer of money to [deleted]?

Mr. **Criden**. No—did I discuss it with who?

Mr. **Wheeler**. With Weinberg.

Mr. **Criden**. No.

Mr. **Wheeler**. On September 26, 1979, Mr. Criden, you had a conversation with Mr. Weinberg—again, I have the transcript in front of me, and you are welcome to look at it if you like—in which you raise Congressman [deleted] name, and Weinberg asks you: All right, now, you know these guys, right? and you answer: Yes.

> [70] Mr. **Weinberg**. You did business with them before?
>
> **Criden**. Yes.
>
> Mr. **Weinberg**. So I mean, uh, they can be trusted?
>
> **Criden**. Absolutely.
>
> Mr. **Weinberg**. Well, as long as you have done business with them before, that's what counts.
>
> **Criden**. Okay, now, I am going to—I have got a tentative commitment. I have got to do—make some arrangements—and I didn't want to do it until I had a clearance from you on the procedure.

Now, when Mr. Weinberg asked you if you had done business with them before, and they can be trusted, and you assured him that you had done business, and they could be trusted, what did you think Weinberg was talking about? What was he asking you, in your mind?

Mr. **Criden**. If I had ever had any relationship with Congressman [deleted], had I ever given him any money, or had ever done anything of that nature with the Congressman, and which was not true; I did not know Congressman [deleted]. I would not know Congressman [deleted] if he walked through that door.

Mr. **Wheeler**. But you had tried to convey to Weinberg that you done business, had transferred money to him before?

Mr. **Criden**. Absolutely.

[71] Mr. **Wheeler**. And when you say you tried to convey to Weinberg the notion that you had transferred money to Congressman [deleted] before, what do you mean by that?

Mr. **Criden**. I was trying to convince Mr. Weinberg that I had done transactions with Congressman [deleted] before.

Mr. **Wheeler**. Illegal transactions?

Mr. **Criden**. Anything he wanted to believe, yes. Remember, I was just—the only thing on my mind during this entire period of time was to try to get my venture approved.

Mr. **Wheeler**. All right; now, again, this conversation is another one that was on September 26, 1979, which is before Congressman Thompson and before Congressman Murphy. So your understanding as of this conversation was that Mr. Weinberg and Tony DeVito did not know that you had produced anybody yet; isn't that right?

Mr. CRIDEN. Yes.

Mr. WHEELER. You said you did schedule a meeting with Congressman [deleted]?

Mr. CRIDEN. Yes.

Mr. WHEELER. Did that meeting occur?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Why not?

Mr. CRIDEN. Well, No. 1, we got into a hassle out at W Street with Congressman Thompson, which lasted well into the afternoon. There were two meetings. There was an [72] afternoon meeting, and then Congressman Thompson came back to the Hill, and then we went back out. The meeting was scheduled, I believe, for 5:30 p.m., so it was impossible to keep that meeting.

Second of all, I just never pursued Congressman [deleted] any further. I just dropped it.

Mr. WHEELER. How did you cancel the meeting with Congressman [deleted]?

Mr. CRIDEN. I think I called his office and spoke to his secretary or someone in his office and told them that I had a 5:30 p.m. appointment and would not be able to make it, and that is the last I spoke to Congressman [deleted] or anybody in his office.

Senator RUDMAN. I would just like to ask one question. Why did you cancel it, and why did you not pursue it further, since there was a history of their receiving substantial sums of money each time such a meeting was arranged?

Mr. CRIDEN. Senator, I just had the feeling that nothing would—that if I mentioned any money to Congressman [deleted], it would not have been a very pleasant situation. I do not know where I got that idea from, but just remember, the Thompson situation was the first situation that I directly was in, face to face. It had been my understanding in the Williams situation that the Congressman would not have to pick up the money directly—I am sorry, Congressman Thompson—and that when I had this, what I call, harangue or dispute with [73] Mr. Amoroso and Mr. Weinberg as to how this was going to be handled, I just had the feeling that this would not work with Congressman [deleted], that Congressman [deleted] would not accept any money from anybody, just based upon my few-minute conversation with Congressman [deleted]. So I just dropped it.

Senator RUDMAN. But had you had a different feeling, and thought that he might have and would play, you might have gone through with it.

Mr. CRIDEN. I might have called him back and tried to rearrange the meeting.

Senator RUDMAN. Though at that point, there would have been no question but that you were involved in illegal activity——

Mr. CRIDEN. Yes, sir.

Senator RUDMAN [continuing]. For whatever motivation, which you have explained to us.

Mr. CRIDEN. Yes, sir. I am not very proud of it, sir.

Mr. NEAL. Mr. Criden, the truth of the matter is that the reason it was called off with Congressman [deleted] is because Congressman [deleted] refused to meet with you all anywhere but in his office; isn't that correct? Didn't you try to arrange a meeting with him in [deleted]——

Mr. CRIDEN. Yes.

Mr. NEAL [continuing]. And he said: "No. Any meeting with me is going to be in my office"?

[74] Mr. CRIDEN. That is correct. But I had arranged to meet with him in his office at 5:30 on that afternoon, just myself.

Mr. NEAL. You were going to his office?

Mr. CRIDEN. Yes; I was going to go to his office in the House Office Building.

Mr. NEAL. But it is true, is it not, that Congressman [deleted] had more than once declined to meet with you or your clients outside the office?

Mr. CRIDEN. Yes, sir. The first time I spoke to Congressman [deleted], I believe he was home in [deleted] on a recess, and I suggested that perhaps that sheik's representatives would be more than willing to fly out to [deleted] to meet with him, and he rejected that. He said he would prefer to have any conferences in his office in Washington.

Mr. NEAL. Mr. Criden, give me as brief as answer to these questions as you can and be accurate——

Mr. CRIDEN. Yes, sir.

Mr. NEAL [continuing]. And if you can answer them yes or no and then explain, that would be preferable.

During a taped conversation with Mel Weinberg on October 10, 1979, Mel Weinberg advised you to line up the next Congressman, and you indicated that it would be Congressman Ryan. Weinberg volunteered that the next Congressman would be Murphy, not Ryan; is that correct?

Mr. CRIDEN. I believe so, yes, sir.

[75] Mr. NEAL. Did you ever speak with Congressman Murphy prior to Frank Thompson introducing him to you on October 19, 1979?

Mr. CRIDEN. No, sir.

Mr. NEAL. On October 16, 1979, John Good reported to Thomas Puccio that you had indicated that Congressman Murphy had agreed to accept a $50,000 cash payment in return for aiding the sheik with his immigration problems. Is it not true that on that day, October 16, when Mr. Good was telling Mr. Puccio that, you had never spoken with Congressman Murphy?

Mr. CRIDEN. If you will tell me the day of my meeting with Congressman Murphy at the House Maritime Committee, that is the first time—I do not recall that date, but that is the first time that I met Congressman Murphy. I think it was October 19.

Mr. NEAL. So that as of October 16, you had never spoken to Congressman Murphy?

Mr. CRIDEN. That is correct, sir.

Mr. NEAL. And you had no basis for believing that he had agreed to accept a bribe in return for aiding the sheik, and had not communicated any such information to Mr. Weinberg, Amoroso, or any other Government agent?

Mr. CRIDEN. Well, I may have told Mr. Weinberg that I had arranged a meeting with Congressman Murphy, based upon Congressman Thompson's statement to me that Congressman [76]

Murphy would be willing to meet with the shiek's representative. But as far as a direct confrontation or conversation with Congressman Murphy, I had never spoken to the Congressman prior to October 19.

Mr. NEAL. Anything you told, then, anything you communicated to Mr. Weinberg, Amoroso, or any other Government agent as of October 16 would have been based on what Congressman Thompson told you——

Mr. CRIDEN. Yes.

Mr. NEAL [continuing]. If he told you anything?

Mr. CRIDEN. If he told me anything, yes.

Mr. NEAL. Do you remember communicating that to Weinberg or Amoroso?

Mr. CRIDEN. No, sir.

Mr. NEAL. You met with Congressman Murphy and Congressman Thompson on October 19 in Washington, D.C. Is that the first time you had ever spoken to him?

Mr. CRIDEN. To Congressman Murphy?

Mr. NEAL. Congressman Murphy.

Mr. CRIDEN. Yes, sir.

Mr. NEAL. OK, so it is October 19. At that meeting, did you discuss with Congressman Murphy that a cash payment would be offered to him at the planned October 29, 1979, meeting?

Mr. CRIDEN. There was no discussion of money.

[77] Mr. NEAL. No discussion. At that meeting, did you discuss the sheik's immigration problems with Congressman Murphy?

Mr. CRIDEN. Yes, sir.

Mr. BEN-VENISTE. Did you say Murphy?

Mr. NEAL. Congressman Murphy.

Mr. CRIDEN. Yes, sir.

Mr. NEAL. What did you say about the sheik's problems?

Mr. CRIDEN. I told him that there was a possibility that some day the sheik may want to come to the United States and wanted to have as many friends as possible among Members of Congress, and——.

Mr. NEAL. What did he say?

Mr. CRIDEN. And he said he would be more than happy to meet with the sheik.

Mr. NEAL. Anything about money, though, or any impropriety in that conversation?

Mr. CRIDEN. Congressman Thompson had advised me on the way over not to discuss any money with Congressman Murphy, so I did not.

Mr. NEAL. Not to discuss any money with Congressman Murphy. Did you—strike that. Is that the best of your recollection of that conversation, then?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. During your visit to Murphy's Staten [78] Island office on October 20—do you remember that——

Mr. CRIDEN. Yes, sir.

Mr. NEAL [continuing]. And during your ride to the Kennedy Airport Hilton Inn with Murphy on that day, did your discuss with him that a cash payment for a bribe would be offered?

Mr. CRIDEN. To the best of my recollection, I do not recall ever mentioning money to Congressman Murphy on the ride to the Hilton Hotel.

Mr. NEAL. Did you personally give any portion of the $50,000 transferred to you on October 20, 1979, to John Murphy?

Mr. CRIDEN. No, sir.

Mr. NEAL. Did any other individual ever tell you that they had given any portion of the $50,000 to John Murphy?

Mr. CRIDEN. I gave $20,000 of that money to Congressman Thompson, and it was my understanding—whether he did or he did not, I have no independent knowledge of it—that he was going to give that to Congressman Murphy.

Mr. NEAL. What conversation—was your understanding based on a conversation with Congressman Thompson?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. What was the substance of that conversation?

Mr. CRIDEN. Well, I met with Congressman Thompson at the Hilton Inn on the New Jersey Turnpike—I believe it was the Monday after the meeting——

[79] Mr. NEAL. After the meeting on the 20th?

Mr. CRIDEN [continuing]. Yes, sir—and I gave him $20,000, and he said he would take care of Congressman Murphy, and that was the last I had heard about that situation.

Mr. NEAL. Well——

Mr. CRIDEN. But I never gave Congressman Murphy any money.

Mr. NEAL. So you gave Congressman Thompson $20,000 of the $50,000?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. And he said that he would take care of Congressman Murphy?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. Prior to that October 20 meeting at the Kennedy Airport Hilton Inn, did you ever mention to Congressman Murphy that a briefcase, credentials, or documents would be transferred to you at that meeting?

Mr. CRIDEN. Not to my recollection, no, sir.

Mr. NEAL. [Perusing documents.] I am ad libbing here. I had some questions, but I am going to have to ad lib a little bit.

You had a ride with Congressman Murphy——

Mr. CRIDEN. Yes, sir.

Mr. NEAL [continuing]. And you rode with him from his Staten Island office?

[80] Mr. CRIDEN. From his Staten Island office to the Hilton Inn at Kennedy Airport, in his car.

Mr. NEAL. Did you tell him what was going to happen at the meeting?

Mr. CRIDEN. Yes—Well, I told him that there would be a discussion about the immigration situation, that there would be a discussion with regard to the sheik making some investments in the Congressman's district. As a matter of fact, we got into specifics, such as the Brooklyn Navy Yard and things of that nature, that Congressman Murphy was interested in. And Congressman Murphy told me that there was no such thing as a private immigration bill; he would do whatever he could to assist the sheik. He told me that he had been instrumental in assisting Mr. Somoza in getting into the country. He told me that he had been instrumental in obtaining some assistance for the Shah, and things of that nature, and that he knew his way around with regard to those things, and that he certainly would be more than happy to try to assist those gentleman.

Mr. NEAL. But nothing about quid pro quo that you know of?

Mr. CRIDEN. Nothing.

Mr. NEAL. Either in his office or on the ride?

Mr. CRIDEN. Right—there was never any meeting in his office at which time the Congressman and I were alone. There were several of Congressman Murphy's aides and political [81] associates.

Mr. NEAL. All right, then, with the ride to the airport.

Mr. CRIDEN. That is right. That was the only time we were alone.

Mr. NEAL. Well, at the time of that meeting, Mr. Criden, you had never had an opportunity with Congressman Murphy that would suggest any impropriety?

Mr. CRIDEN. That is correct, sir.

Mr. NEAL. At that meeting, a briefcase was passed to you; is that correct?

Mr. CRIDEN. It was passed to Congressman Murphy.

Mr. NEAL. Did he go out with it?

Mr. CRIDEN. No. I went out with it. He said, "Give it to Howard. He'll take it.".

Mr. NEAL. "Give it to Howard. He'll take it." Did you have any conversation with Congressman Murphy at any time prior to that moment that would indicate to Congressman Murphy what was in the briefcase?

Mr. CRIDEN. I never had any conservation. I assumed that he knew what was in the briefcase, based upon what Congressman Thompson had told me, that he would make all the appropriate arrangements.

Mr. NEAL. With Congressman Murphy?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. But as far as your conversation with [82] Congressman Murphy, you had not said anything to him to suggest what would be in the briefcase?

Mr. CRIDEN. No, sir.

Mr. NEAL. Not documents, not credentials, or anything else?

Mr. CRIDEN. No. I assumed he knew what was in the briefcase, but I do not know whether that is a valid assumption or not.

When we left the room, we both went down on the elevator, he got into his car, and I got into my car, and we just left.

Mr. NEAL. And you had the briefcase?

Mr. CRIDEN. Yes, sir.

Mr. NEAL. At any time prior to the October 20, 1979, Kennedy Airport Hilton Inn meeting, did you discuss with Congressman Murphy the "ground rules" relating to how Murphy would acknowledge money being passed, or how it would be carried from the room?

Mr. CRIDEN. No, sir.

Mr. NEAL. I gather your previous answer would dispose of that.

Mr. CRIDEN. Yes, sir.

Mr. **Neal**. Did Frank Thompson ever tell you that he had such a conversation with Congressman Murphy?

Mr. **Criden**. He just said to me that he would take care of [83] Congressman Murphy, when I met with him on the 22d, I believe it was, at the Hilton Inn on the New Jersey Turnpike, when I gave him $20,000.

Mr. **Neal**. Well, I am talking about before this meeting on October 20, did Congressman Thompson ever tell you that he had had discussions with Congressman Murphy regarding the ground rules as to how Murphy would acknowledge the money being passed?

Mr. **Criden**. He just told me not to discuss money with Congressman Murphy, that he would take care of the entire matter.

Mr. **Neal**. And on October 17, 1979, in a taped conversation with Mel Weinberg, you say that you have spoken to Murphy and set up a luncheon appointment with him. Is it not true, as I think you previously answered, that as of that date, you had never spoken to Murphy?

Mr. **Criden**. That is correct, sir.

Mr. **Neal**. And what were you saying that for? Were you just puffing?

Mr. **Criden**. Congressman Thompson told me that he had made the necessary arrangements with Congressman Murphy. I just told Weinberg that I had spoken to Murphy, and everything was in a "Go" situation, or something to that effect.

Mr. **Neal**. To make it look like you were more involved and more important than you were?

[84] Mr. **Criden**. That is right.

Mr. **Neal**. In that same conversation, you stated that you assumed Thompson had already spoken with Murphy. What did you base that assumption on?

Mr. **Criden**. Just that Thompson told me that he had spoken to Congressman Murphy, that Congressman Murphy clearly understood the situation, and was already to go to a meeting with the shiek.

Mr. **Neal**. OK, next question. After leaving the Hilton Inn on this date, October 20, did you tell Congressman Murphy that you had received money?

Mr. **Criden**. No, sir.

Mr. **Neal**. Where did you go with him after that—oh, you said you got in separate cars.

Mr. **Criden**. We went down the elevator and went out to the parking lot, he got into his car, and we shook hands, I got into my car, and we left.

Mr. **Neal**. You never told him what was in the briefcase?

Mr. **Criden**. There was never any discussion.

Mr. **Neal**. OK, one last question on this. On January 7, 1980, you met with Congressman Murtha, Agent Amoroso, and Weinberg. At that meeting, Amoroso promised to pay you $5,000 if you returned with Murphy?

Mr. **Criden**. Yes, sir.

Mr. **Neal**. It is not true that you were paid the $5,000 [85] on January 10, 1980, merely for producing Murphy at the W Street townhouse?

Mr. **Criden**. Yes, sir.

Mr. NEAL. Thank you.

Mr. WHEELER. Mr. Criden——

Senator HUDDLESTON. Can I ask one question, Mal, just a simple question?

Mr. WHEELER. Yes.

Senator HUDDLESTON. In all of these contacts you had with Members of Congress that you eventually set up meetings for, is it your opinion that each of them knew, as they went to that meeting, that that meeting was to present them with an opportunity to receive some financial gain in return for some service that they would provide?

Mr. CRIDEN. I think each situation stands on its own. With regard to Congressman Myers, I would say that the answer to that was yes, sir.

Mr. BEN-VENISTE. May we have a moment?

Senator HUDDLESTON. Yes.

[Witness conferring with counsel]

Mr. CRIDEN. In the Myers situation, I do not believe, as I recollect it, that he ever thought he was going to have to be called upon to perform a service, and in the Lederer situation——

Senator HUDDLESTON. But he understood that a proposition **[86]** was going to be made, which he would be paid for?

Mr. CRIDEN. Yes, but I do not think he ever felt that he was going to ever have to do anything.

Senator HUDDLESTON. Well, I understand that part of it.

Mr. CRIDEN. Yes. And so far as Congressman Lederer was concerned, I believe that he never expected to receive any compensation when he went to the meeting. He told Mr. Johanson he did not want any money, that he did not expect anything, and he was doing it as a favor to Mr. Johanson, and also in the hope that he could get some investment in his congressional district. I honestly believe that later on, he knew that there was a substantial amount of money involved, and he asked for a couple of thousand dollars to assist in some house—or, put a roof on his house, or something of that nature.

Insofar as Congressman Thompson was concerned, I think that he thought that he was never going to called upon to do anything, but he knew that there was going to be some money passed to him.

As far as Congressman Murphy is concerned, as I just answered Mr. Neal, I do not know exactly what Congressman Thompson told Congressman Murphy. As far as Mr. Murtha was concerned, he never wanted to accept any, and did not accept any money or any consideration, and when it was offered to him, he pulled back and said he was not interested in going any further.

[87] Senator HUDDLESTON. Have you learned subsequent to these events at all of any effort that was made by the officials to make any kind of a check on the representations that you made to them as to whether or not the person being brought in was at least inclined to participate in some activity that would not be totally legal?

Mr. CRIDEN. I do not think any effort was made to check on anybody, in my opinion.

Senator HUDDLESTON. Thank you.

Mr. Wheeler. Mr. Criden, before the Thompson meeting, you did assure Mr. Weinberg, though, that Mr. Thompson would be willing to do whatever Mr. Weinberg wanted him to do; isn't that right?

Mr. Criden. Yes, sir.

Mr. Wheeler. In making that assurance to Mr. Weinberg—well, let me ask you this. Why did you make that assurance, such an express representation to Mr. Weinberg, if you thought the whole thing was playacting? Specifically, why did you say to Mr. Weinberg, "Well, here's this guy's problem, OK. He doesn't—he is willing to do whatever you want him to do," on September 26, 1979?

Mr. Criden. Yes, but it was just promises, and if you read the transcript of the first meeting that afternoon, you would find Mr. Thompson not willing to commit himself as far as Mr. Weinberg or Mr. DeVito wanted him to go, to the point [88] that Mr. Thompson picks up the telephone and calls an administrative assistant in the Immigration Committee and asks him specific questions about what the procedure would be to assist somebody in getting into the country, and they are not satisfied with Mr. Thompson's replies, and consequently, do not want to give him the money at that stage of the game, and he doesn't want to acept any money.

Mr. Wheeler. But you brought him back that afternoon.

Mr. Criden. After they pressured me to bring him back, yes.

Mr. Wheeler. And in his presence, you were handed a briefcase?

Mr. Criden. Yes, sir.

Mr. Wheeler. Was the briefcase handed to you or to Congressman Thompson?

Mr. Criden. The briefcase was handed to both of us, sort of; we both took the briefcase.

Mr. Wheeler. Did Mr. Thompson know what was in the briefcase?

Mr. Criden. I really cannot tell you what was in Congressman Thompson's mind, but in my opinion, I would say yes, that Congressman Thompson knew what was in the briefcase.

Mr. Wheeler. On what do you base that opinion?

Mr. Criden. Well, when we got out into the car, I opened the briefcase up and handed him $20,000, so I would assume that [89] he knew what was in the briefcase.

Mr. Wheeler. Now, were you aware at the transaction with Congressman Myers on August 22, 1979, and the transaction on September 11, 1979, with Congressman Lederer, that the money that was paid was also cash?

Mr. Criden. Oh, sure.

Mr. Wheeler. Did you think that it was normal practice for campaign contributions to be made to Congressmen in lump sums of $25,000, $50,000, or $35,000 in cash?

Mr. Criden. There was nothing normal about this entire situation. It was a fantasy.

Mr. Wheeler. Did it strike you that this indicated there was something illegal about the situtation?

Mr. Criden. Only illegal to the extent that they were ripping off the sheik, so to speak. It was the impression that I had throughout that the more money they gave away, the more money they made for themselves. Based upon Mr. Weinberg's representations several times to me, "Well, we took out money. Now we have got to use it.

You have got to get me somebody. Something else fell down, and I have to replace it, because I can't put it back."

Senator RUDMAN. Mr. Criden. I understand what you are saying about it all being unreal. I can understand that. But you certainly realized, or you had to have some suspicion, when a Congressman takes that kind of money in cash, that [90] whatever is being done to the giver, that the taker is violating some kind of a law. You had to know that.

Mr. CRIDEN. At some stage of the game, I did.

Senator RUDMAN. You had to know that, Mr. Criden.

Mr. CRIDEN. Yes, sir, yes, sir. But it is like being a little bit pregnant at that stage of the game. We were already well into the situation..

Mr. WHEELER. You said that after the first meeting on October 9 with Congressman Thompson that they—I take it, DeVito and Weinberg—pressured you to bring him back. Isn't it a fact that they were willing to call off the whole thing at that point?

Mr. CRIDEN. That was not my impression.

Mr. WHEELER. They did not tell you that they were willing to call it off?

Mr. CRIDEN. Well, they went through that, you know, sort of a negotiating, bargaining technique, "OK, take it away, let's forget about it," you know, but really, at no time did anybody get up and want to leave the meeting.

As I viewed it, and as I felt at that time, based upon my recollection now, the pressure was on to complete the Thompson meeting, and for me to go back, "Why don't you go back and see Thompson, and get him to say what he has to say and pick up the envelope."

Remember, also—and I hate to say this—but Congressman [91] Thompson was drinking rather heavily all afternoon and was pretty well shot by the time we came back for the second meeting.

Mr. WHEELER. Now, Mr. Criden, again, still in September, and specifically, on September 27, 1979, isn't it a fact that you identified three additional public officials, a Senator and two Congresssmen from [deleted], to Mr. Weinberg?

Mr. CRIDEN. Yes.

Mr. WHEELER. And who were those three individuals?

Mr. CRIDEN. To the best of my recollection, it was Senator [deleted], Congressman [deleted], and I do not recall the other.

Mr. WHEELER. That would have been Congressman [deleted], because you said they were both from [deleted].

Mr. CIDEN. [deleted], right. Those three names, I got from Mr. Silvestri.

Mr. WHEELER. [deleted.]

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. What did you do with respect to Congressman [deleted]?

Mr. CRIDEN. Nothing.

Mr. WHEELER. Nothing at all?

Mr. CRIDEN. Nothing.

Mr. WHEELER. You did not even get back to Mr. Silvestri?

[92] Mr. CRIDEN. Mr. Silvestri got back to me and said that he had spoken to Congressman [deleted], and he would have nothing to do with it.

Mr. **Wheeler**. What about Senator [deleted]?

Mr. **Criden**. To the best of my recollection, I believe that Mr. Silvestri told me that he never even arranged an appointment with Senator [deleted].

Mr. **Wheeler**. But Mel Weinberg and Tony DeVito did not indicate to you that they were not interested in any of those individuals, did they?

Mr. **Criden**. No, sir.

Mr. **Wheeler**. In fact, they expressed an interest.

Mr. **Criden**. They expressed an interest in almost everybody.

Mr. **Wheeler**. Now, earlier this morning, you said that there did not come a time when you tried to cut out Mayor Errichetti. Do you recall that?

Mr. **Ciden**. Yes, sir.

Mr. **Wheeler**. Would it refresh your recollection on that if I told you that in a recorded conversation on September 27, 1979, having identified these individuals, you said,

> I will deliver them myself.
> **Weinberg**. OK.
> **Criden**. OK.
> **Weinberg**. Right.
> [93] **Criden**. Now, do not say anything to Angie about these two guys.
> **Weinberg**. Ok.
> **Criden**. OK?
> **Weinberg**. No problem.

Weren't you trying to cut out Errichetti at that point?

Mr. **Criden**. I was trying to convince Weinberg that I was going to cut out Errichetti, but I never did. After each particular meeting, I advised Mayor Errichetti what happened and gave him his share.

After the Noto situation, Errichetti told me he did to want to have any further dealings with Weinberg.

Mr. **Wheeler**. Did he tell you why he did not want to have any further dealings with him after the Noto situation?

Mr. **Criden**. Because he felt, as he told me, that nothing they had promised him had come into fruition, and he thought that they were just phonies, to the extent that they could not produce any of the sheik's investments that he had promised Errichetti.

Mr. **Wheeler**. Did he suggest to you that he had somehow reached that conclusion because of the Noto incident?

Mr. **Criden**. No—well, I cannot really tell you what was in Errichetti's mind; I do not know.

Mr. **Wheeler**. What did he say to you?

Mr. **Criden**. Well, he said to me that he thought that they [94] could not produce, and he thought that they were phonies, and he did not really want to have anything further, and with regard to producing Congressmen to those guys, I should do it directly with Weinberg and carry it on directly, myself, which I did, but I always saw Errichetti after the transaction took place, even in the Philadelphia situation. [Conferring with counsel.] One other thing, Mr. Wheeler.

Mr. **Wheeler**. Yes, go ahead.

Mr. **Criden**. Errichetti also told me that even all during this period of time, Weinberg kept calling him and trying to get through to him. As a matter of fact, Weinberg said to me on several occasions that he was having great difficulty getting through to Errichetti and what was bothering him.

Mr. WHEELER. You testified, Mr. Criden, that it was your understanding that Errichetti was going to take care of Weinberg and DeVito; he was going to make payments to them out of these bribes. Did Errichetti ever tell you that he had in fact made such payments following any of these transactions?

Mr. CRIDEN. I really do not accept the term, "bribe." Do you mean whether Errichetti was giving any money to——

Mr. WHEELER. To Weinberg or DeVito.

Mr. CRIDEN. To Weinberg and DeVito. He never told me—it was an impression that I had, and I was under that assumption.

[95] Mr. WHEELER. But he never told you that?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Weinberg never told you that?

Mr. CRIDEN. Weinberg told—you mean Errichetti.

Mr. WHEELER. No; I am asking Weinberg now.

Mr. CRIDEN. Oh; Weinberg never told me that he ever got a nickel from anybody.

Mr. WHEELER. DeVito?

Mr. CRIDEN. Never said that he got any money from anybody.

Mr. WHEELER. And DeVito never told you that Weinberg ever got any money from anybody?

Mr. CRIDEN. No. But Errichetti did tell me at one time that he had given Weinberg substantial sums of money before I had ever gotten involved, with regard to Mr. MacDonald, with the casino commission, the gambling commission. He did tell me that he had given Weinberg a substantial sum of momey. He also told me that he gave Weinberg various gifts throughout this entire situation.

Mr. WHEELER. Did there come a time, Mr. Criden, in late September or early October of 1979, when you concluded that in fact, the payments that were being made to Congressman, or being offered to Congressmen, were illegal—and not because of fraud, but because of public corruption?

Mr. CRIDEN. Throughout this entire—I know this sounds [96] ludicrous at times—but throughout this entire period of time, I was told that nothing was ever going to be asked of these Congressmen; there would be no quid pro quo.

Mr. WHEELER. Can you just answer my question "Yes" or "No". Did there come a time when in your own mind, you concluded that the payments that were being offered to or made to the Congressmen by DeVito or Weinberg were illegal because of public corruption, because of bribery?

Mr. BEN-VENISTE. You are defining "corruption" as only bribery, in a sense——

Mr. WHEELER. As bribery or an illegal gratuity.

Mr. BEN-VENISTE. My view of fraud would encompass public corruption in this situation.

Mr. WHEELER. Other than fraud.

Mr. CRIDEN. I don't really know what my state of mind was at that time. I was so confused and so involved at that period of time. I guess the answer probably is yes, but I just didn't want to face up to it at that time.

Mr. WHEELER. Well, I have made a note here that on at least four occasions—October 2, 1979; October 21; October 26 and October 29, 1979—in conversations with Mr. Weinberg, you indicated that you did not want to discuss payments to various Congressmen over the telephone, because it was not a matter that should be discussed on the telephone; you wanted to talk on a clean line, from one public telephone [97] to another. Does that refresh your recollection, that you believed that you really ought not to be discussing payments to Congressmen, that there was something illegal about that?

Mr. CRIDEN. Well, if it was improper, it was improper, and I don't know that that indicated any state of mind on my part.

Mr. WHEELER. Why did you want to talk on a clean line?

Mr. CRIDEN. Because I really did not trust Mr. Weinberg at that time, and I do not know whether he was setting me up, or anything of that nature.

Mr. WHEELER. Setting you up in what way?

Mr. CRIDEN. For anything—implicating him in his fraud with the sheik. I did not trust Mr. Weinberg at that time.

Mr. WHEELER. Did you do anything to check out Mr. Weinberg?

Mr. CRIDEN. Yes, I did.

Mr. WHEELER. What did you do?

Mr. CRIDEN. Well, not to check out Mr. Weinberg, but I checked out—attempted to check out—No. 1, the Abdul Corp., and No. 2, the title to the house at W Street.

Mr. WHEELER. And did you check on a license plate of a rental car used in Florida?

Mr. CRIDEN. I tried to.

Mr. WHEELER. Why did you do that?

[98] Mr. CRIDEN. Because I began to get suspicious of Mr. Weinberg.

Mr. WHEELER. When was that?

Mr. CRIDEN. Oh, sometime in the latter part of 1979.

Mr. WHEELER. In September of 1979?

Mr. CRIDEN. Somewhere around there.

Mr. WHEELER. What made you suspicious of Mr. Weinberg at that point?

Mr. CRIDEN. Just that nothing that he ever said with regard to my situation had ever come down, an he kept stringing me, and dangling me, and because he did not seem to be the type of a guy that a sheik or some responsible person would have in his employ.

Mr. WHEELER. Again, in terms of your understanding of what was expected or what might be expected of the Congressmen, do you recall a conversation on October 3, 1979, with Weinberg, where he said,

> Number one is that we sit with the guy, we do meet all intentions that if we do call on them, that they have to do what we ask, you know, they don't have to, if they can't they can't.

Do you recall that conversation?

Mr. BEN-VENISTE. Could you show me the reference?

Mr. **Wheeler**. This is for the record, [Deleted],[2] a conversation between Criden and Weinberg.

Mr. **Criden** [perusing document]. Yes. I had this conversation.

[99] Mr. **Wheeler**. OK.

Mr. **Criden**. But if you read that carefully, the way it reads is that, "If they can't do it, they can't do it."

Mr. **Wheeler**. Right. That is a question of their ability, right, not a question of what was or what might be expected of them?

Mr. **Criden**. The way I interpret that is Weinberg saying to me is, if later on down the road, they are called upon to do something, and they can't do it, fine, they just can't do it, and it doesn't matter, it makes no difference.

Mr. **Wheeler**. On October 4, 1979, Mr. Criden, you had a conversation with Weinberg in which you said,

> But listen to me, you have got to understand, OK, that there are some problems on our side, OK. You keep pressing us and me, and I understand that you needed to have a candidate, OK? But you know, let me tell you, to convince these guys to do this number is not as easy as you think it is. They are so, they drive me bananas. You don't have to deal with these guys like I do, OK? Then, in the middle of the goddamn, they make a commitment to you, they get chicken feet, and they say they don't want to do it, or they want to do it this way, they want to do it that way, or they don't want to do it at all, OK? I go nuts.

When you talked about convincing these guys to do this number not being as easy as you think it is, what "number" were [100] you referring to?

Mr. **Criden**. The assurances that they would do whatever the sheik wanted him to do, and to play out the scenario that Mr. Weinberg had written, you know, prepared.

Mr. **Wheeler**. Now, on October 17, 1979, you had a conversation with Mr. Weinberg in which you first gave him the name of Congressman Murphy; is that right?

Mr. **Criden**. If you have the tape, the conversation, there, I assume that is correct.

Mr. **Wheeler**. And you told him,

> Murphy is the chairman of the House Committee for Immigration—not Immigration, Maritime, ships—he is the No. 1 man in the Merchant Marine and the Maritime; the top guy in the country in the legislature.

Where did you get that information?

Mr. **Criden**. Congressman Thompson told me.

Mr. **Wheeler**. So by the 17th, you had talked to Congressman Thompson about Congressman Murphy?

Mr. **Criden**. I'm sure.

Mr. **Wheeler**. And Weinberg said to you,

> As long as you know that the guy knows the ground rules, we don't want to have no [unintelligible].

And then you said,

> And then Friday, I am coming, I am going to go right into Washington. I am going to have lunch with this guy, with Murphy, and I am going to make sure he understands clearly how you want me to bring him, and what time and where.

[101] Did you have such a meeting with Murphy?

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[2] The omission of a citation to a confidential document in these hearings is identified by "[Deleted]." For a complete explanation of why, see S. Rep. No. 97-687, 97th Cong. 2d Sess. V-VI (1982).

Mr. CRIDEN. No.

Mr. WHEELER. Why not?

Mr. CRIDEN. Well, I had a meeting with Murphy—I believe it was on October 19. It was not a luncheon meeting. It was a meeting arranged by Congressman Thompson.

Mr. WHEELER. And did you make sure that Murphy understood clearly how Weinberg wanted him to be brought?

Mr. CRIDEN. I just explained the situation as I testified to when Mr. Neal asked me that same question.

Mr. WHEELER. But here, you told Weinberg you were going to do it. What changed your mind?

Mr. CRIDEN. I don't think I ever intended to do anything other than what I did. I would have told Weinberg anything at that stage of the game.

Mr. WHEELER. Following the meeting on October 20, and in particular, on October 21, 1979, you had a conversation with Weinberg, and Weinberg asked you, "When is he, Murphy, going to get back to you on the stuff that he's got?

"Criden. One day during the week."

Later, "Weinberg. He was satisfied with the amount?

"Criden. Everything was as-is."

You then said, "He"—referring to Murphy—"you know, he has been there before, you know. He has done this sort of a number before. He is probably the best guy we got." Had you [102] talked with Murphy in between the meeting and this conversation with Weinberg about the money?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Not at all?

Mr. CRIDEN. Not at all.

Mr. WHEELER. Weinberg then asked you, "Whatever happened to the guys in [deleted]? and you said, "Minor problem with the one guy. You know, he is a little bit [deleted]. The other guy got a little bit nervous." You were referring to [deleted] and [deleted]?

Mr. CRIDEN. Probably; yes.

Mr. WHEELER. And had you contacted them at all?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Weinberg asked you, "What about the other guy, the other [deleted] guy, remember, we were supposed to meet?"

You said, "Yeah, he called me Friday, but I couldn't get to him, and I will try to see him one day in the early part of the week."

Was that referring to Congressman [deleted]?

Mr. CRIDEN. I assume so.

Mr. WHEELER. Had Congressman [deleted], in fact, called you?

Mr. CRIDEN. I do not believe so; no.

Mr. WHEELER. But he may have?

Mr. CRIDEN. He may have. He may have called me just to [103] find out why I canceled that 5:30 meeting on that afternoon.

Mr. WHEELER. On November 6, 1979, in a recorded conversation between you and Weinberg, he asked you what the status with respect to [deleted] was, the two guys from [deleted], and [deleted], and you responded in various ways to those. At one point, you said, "No, listen, man, you gotta be damn careful. You gotta even be careful on how you talk to some of them, or you wind up in the shithouse."

What was the problem that you were referring to when you said you got to be careful on how you talk to some of them?

Mr. CRIDEN. Just a general statement that you have to be careful how you talk to people, like Congressmen, about a situation such as this. I never did anything further with any of those people involved.

Mr. WHEELER. When you said that you had to be careful, though, do you mean you had to be careful, or you might——

Mr. CRIDEN. Well, I never had such a conversation with any of those Congressmen, either. As a matter of fact, I never spoke to Senator [deleted], I never spoke to Congressman [deleted], I never spoke to Congressman [deleted], I never spoke to Congressman [deleted] or to Senator [deleted]. I never had any conversation at all with any of those gentlemen.

Mr. WHEELER. But weren't you conveying to Weinberg by that statement that you understood that when you talked to Congressmen about matters that you and Weinberg were involved [104] in that you had to be careful, because it might be construed as bribery?

Mr. CRIDEN. I was just puffing, playing the part with Mr. Weinberg and hoping that I could accomplish at some stage of the game what my ultimate objective was, which was a legitimate financing transaction.

Mr. WHEELER. Did there come a time when you raised the name of a Mr. [deleted]?

Mr. CRIDEN. Yes.

Mr. WHEELER. And why did you raise his name?

Mr. CRIDEN. I raised his name not to Mr.—to Mr. Weinberg?

Mr. WHEELER. Yes.

Mr. CRIDEN. I don't—I don't know. I can't recall the exact circumstances.

Mr. WHEELER. Who is Mr. [deleted]?

Mr. CRIDEN. He is [deleted].

Mr. WHEELER. Did you know him?

Mr. CRIDEN. Yes, I do.

Mr. WHEELER. When did you meet him?

Mr. CRIDEN. I have known Mr. [deleted] for many years, from the time he was a young man, when his father was a [deleted].

[105] Mr. WHEELER. Do you remember suggesting to Mr. Weinberg that Mr. [deleted] might be interested—that you might be able to approach Mr. [deleted] about passing him some money?

Mr. CRIDEN. I said I might be interested in setting up an appointment with Mr. [deleted], but I never pursued it any further.

Mr. WHEELER. But you were the one who raised his name?

Mr. CRIDEN. Probably, yes—but I don't recall—the only time I recall raising Mr. [deleted] name is in [deleted].

Mr. WHEELER. On November 6, 1979, Mr. Criden, in a conversation with Mr. Weinberg, the relevant portion of the conversation went like this:

> CRIDEN. You ain't going to have no problem which, 'cause two of those guys, I own, body and soul.
>
> WEINBERG. Which two are they?
>
> CRIDEN. The two guys from Philadelphia, Ray and Ozzie.
>
> WEINBERG. And he—I like those two out of the four guys.

CRIDEN. Ain't nobody.

WEINBERG. Want to know something? Out of the four guys, those are the two that are the best.

CRIDEN. Yeah.

WEINBERG. They are stand-up guys.

CRIDEN. And actually, [deleted] is going to be the biggest guy of all, because if [deleted] gets elected in [deleted].

[106] WEINBERG. I'll tell you what I want done, for you to do.

Mr. CRIDEN. What?

WEINBERG. All right. I got to get this goddamn frigging' company on. Can you get an appointment with [deleted]?

CRIDEN. That's no problem. [deleted], his father and I [deleted]. But you got to be very careful with [deleted]. He's got a ton of money, okay? He won't take a quarter, okay?

And then you go on and say,

> Look, it's no problem. Even with [deleted], you go in and see [deleted] and make a type of shot at something. That's no problem. [deleted], and I've known [deleted] since he was kneehigh to a grasshopper.

Again, referring to [deleted]:

> I gave him a ton of money, [deleted], and Ray's no problem, you know, I got Ray.
>
> WEINBERG. You gave [deleted] a ton? Who? [deleted], you mean?
>
> CRIDEN. Yeah.
>
> WEINBERG. You did?
>
> CRIDEN. For his campaign, myself.

Was that the first time that you recall talking about [deleted] with Weinberg?

Mr. CRIDEN. Probably.

[107] By the way, all of that is unadulterated puffery to impress Mr. Weinberg.

Mr. WHEELER. There came a time after that first meeting with Mr. Murphy in which there was discussion among you and Mr. Weinberg and a man named—is it Buser or Busser——

Mr. CRIDEN. Buser.

Mr. WHEELER [continuing]. About further involvement on Mr. Murphy's part; isn't that right?

Mr. CRIDEN. Yes.

Mr. WHEELER. And that conversation about involving Mr. Murphy involved illegal activity by Mr. Murphy, did it not?

Mr. CRIDEN. I do not know what you mean by "illegal activity."

Mr. WHEELER. Well, was Mr. Murphy going to use his influence or his position as a legislator to help some company or some private group in which he had a hidden interest?

Mr. CRIDEN. No, sir.

Mr. WHEELER. Would it refresh your recollection if I told you that there is a tape, transcript, of a conversation on November 8, 1979, among Criden, DeVito, Buser, and Weinberg, in which Weinberg says,

> Murphy could help us if—will he be a partner in this with us, or what?
>
> BUSER. Well, he'll be a silent partner, I would imagine.
>
> [108] CRIDEN. He very well can't be anything else but, as the Chairman of the Committee.

And then later on, in the same conversation:

> DEVITO. Well, I assumed that Murphy has got to stay and keep himself well in the background on this thing because of——
>
> CRIDEN. Oh, he's got to. Otherwise——
>
> WEINBERG. But can he do us some good, though?
>
> CRIDEN. Oh, he's fabulous.

BUSER. Murphy?
WEINBERG. Yeah.
CRIDEN. He's fabulous.

Later on:

BUSER. The thing is to manipulate the acquisitions with the bill, so that you protect every thing that we can possibly get out of the government.

WEINBERG. So what you are telling me, we need Murphy. He is the key to, behind the whole thing.

BUSER. Without him, we could get screwed.

Mr. CRIDEN. This situation related to the purchase of a maritime company in Puerto Rico, as I recollect it at this time.

Mr. WHEELER. Right.

Mr. CRIDEN. And Congressman Murphy said that he knew, I believe it was the Governor of Puerto Rico, and the Puerto Rican government was trying at that time to dispose of this [109] shipping company, and that he could be instrumental in helping us make the appropriate arrangements. Mr. Buser was the former operating head of a substantial shipping company and was a friend of Mr. Murphy's.

Mr. WHEELER. Well, wasn't it your understanding that Murphy was going to be a silent partner in this venture?

Mr. CRIDEN. It was my understanding, but it was never said to be by Mr. Murphy. Mr. Murphy never said to me, "I'm going to be a silent partner."

Mr. WHEELER. But that was your understanding.

Mr. CRIDEN. That was my understanding.

Mr. WHEELER. And you were going to engage in that transaction, with Murphy as a silent partner.

Mr. CRIDEN. Well, I had never had that discussion. It was my reaction that if I could convince Weinberg that Murphy would be of assistance to us in this matter, he would help us arrange the appropriate financing.

Congressman Murphy never told me that he would be a silent partner.

Mr. WHEELER. didn't you say, Mr. Criden,

Between the three of us, he's agreed, he's going to let me hold whatever has to be done for him, OK?

DEVITO. Yea.

CRIDEN. He's in the deal, OK, and he's going to watch us like a baby, OK? And you wouldn't get the deal without [110] him, because he and the fuckin' Governor are like this, and the deal is being made through him, OK?

Mr. CRIDEN. I may have said that, but I never had that conservation with Congressman Murphy. I said a lot of things to Mr. Weinberg and Mr. DeVito.

Mr. WHEELER. There came a time, didn't there, Mr. Criden, when you also proposed the same of Congressman John Murtha, M-u-r-t-h-a?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. And you indicated, did you not, to Mr. Weinberg, that Mr. Murtha also would help on these immigration problems?

Mr. CRIDEN. Yes, sir.

Mr. WHEELER. In return for money?

Mr. Criden. Yes, sir. The truth of the matter was that he never accepted any money, Congressman Murtha, after he had a meeting with Mr. Weinberg and Mr. DeVito.

Mr. Neal. Mr. Criden, two or three questions here, while Mr. Wheeler takes a rest.

At some point, did you ever tell the Government that Congressman [deleted] would use his influence in exchange for $50,000 and that Senator [deleted] would use his influence for $75,000—whether you were puffing or not; did you ever say that?

Mr. Criden. Not to my recollection, Mr. Neal.

[111] Mr. Neal. Would it surprise you if you are quoted in an FBI document as having made that statement?

Mr. Criden. As far as the FBI documents are concerned, nothing would surprise me, Mr. Neal.

Mr. Neal. But you never made that statement?

Mr. Criden. To the best of my recollection, no, sir.

Mr. Neal. You did mention Senator [deleted]?

Mr. Criden. Yes, sir.

Mr. Neal. And you did mention Congressman [deleted]?

Mr. Criden. Yes, sir.

Mr. Neal. What did you say in respect to those people?

Mr. Criden. I said that I thought that I could arrange appointments with those particular——.

Mr. Neal. And that is all?

Mr. Criden. To the best of my recollection, yes, and I got that from Mr. Silvestri.

Mr. Neal. And you passed it on to Weinberg?

Mr. Criden. Yes, sir.

Mr. Neal. One other question. On Myers and Lederer, money went to Mr. Errichetti; right?

Mr. Criden. Yes, sir.

Mr. Neal. And on Thompson, did the money go to Mr. Errichetti?

Mr. Criden. Yes, sir.

Mr. Neal. On Mr. Murphy——

[112] Mr. Criden. Yes, sir.

Mr. Neal. On every one of those——

Mr. Criden. Did you say Murphy?

Mr. Neal. Yes.

Mr. Criden. Yes, sir.

Mr. Neal. On the $5,000 you got, did any of that go to Mr. Errichetti?

Mr. Criden. No, sir.

Mr. Neal. But in all of those four cases, money went to Mr. Errichetti?

Mr. Criden. Yes, sir.

Mr. Neal. Do you know what Mr. Errichetti did with the money, of your own knowledge?

Mr. Criden. I have no idea, sir.

Mr. Wheeler. Mr. Criden, did there come a time when you came to believe that you were going to get paid money by the sheik's representatives simply for introducing them, simply for bringing in a Congressman?

Mr. Criden. Yes, sir.

Mr. **Wheeler**. When did you first come to that understanding?

Mr. **Criden**. The first money I got for just bringing in someone was to arrange the W Street meeting with Mr. Buser and Congressman Murphy to discuss the shipping situation, and Mr. [113] DeVito gave me $5,000 just to arrange the meeting, and there was no discussion of money or anything else at that meeting.

Mr. **Wheeler**. That payment to you was made on January 10, 1980?

Mr. **Criden**. I assume so.

Mr. **Wheeler**. So you didn't receive any payment in 1979, just for bringing someone in; isn't that right?

Mr. **Criden**. That is correct.

Mr. **Wheeler**. And what was your understanding with respect to whether you were going to get paid for bringing in Mr. Jannotti and Mr. Schwartz?

Mr. **Criden**. I was told that I would get paid a fee for just bringing them in.

Mr. **Wheeler**. Did you think that meant that if you simply brought them in and they showed up, even if they turned down the offer of money, that you would still get paid?

Mr. **Criden**. Yes, sir.

Mr. **Wheeler**. Thank you, Mr. Criden. I have no further questions.

Senator **Rudman**. Mr. Neal, do you have any other questions at all?

Mr. **Neal**. No, sir.

Senator **Rudman**. I do not have any other questions. I think they have been adequately covered by counsel this morning.

[114] The committee will stand in recess until tomorrow at 10 a.m.

[Whereupon, at 12:27 p.m., the committee was adjourned, to reconvene Wednesday, September 15, 1982.]

[1] REDACTED COPY OF EXECUTIVE SESSION HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

WEDNESDAY, SEPTEMBER 15, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:05 a.m., in room 357, Russell Senate Office Building, Hon. Daniel K. Inouye presiding.

Present: Senators Inouye, Rudman, Leahy and Huddleston.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy counsel.

Senator INOUYE. The hearing will come to order.

Mr. Errichetti, will you please rise?

[Witness sworn.]

[2] TESTIMONY OF ANGELO J. ERRICHETTI, ACCOMPANIED BY HENRY FURST

Senator INOUYE. Mr. Errichetti, do you have a copy of Senate Resolution 350?

Mr. ERRICHETTI. Now I do, sir.

Senator INOUYE. Have you read it?

Mr. ERRICHETTI. No, I have not, sir.

Senator INOUYE. Would you care to read that?

Mr. FURST. Senator, I have received it and reviewed it.

Senator INOUYE. Have you advised your client?

Mr. FURST. Yes, I have.

Senator INOUYE. Have you received the committee rules?

Mr. FURST. Yes, sir.

Senator INOUYE. Have you also advised your client on the impact of it?

Mr. FURST. Yes, sir.

Senator INOUYE. I would now call upon counsel to proceed with the interrogation.

Mr. WHEELER. Mr. Errichetti, would you please state your full name?

Mr. ERRICHETTI. Angelo J. Errichetti.

Mr. WHEELER. And where do you reside, Mr. Errichetti?

Mr. ERRICHETTI. 1430 Dayton Street, Camden, N.J.

Mr. WHEELER. Please identify your counsel for the record.

[3] Mr. ERRICHETTI. Henry Furst.

Mr. WHEELER. Mr. Errichetti, do you know a gentleman named Melvin Weinberg?

Mr. ERRICHETTI. Mr. Counsel and Senator, I respectfully decline to answer the question under the constitutional rules that apply to me.

Senator INOUYE. Mr. Errichetti, I am communicating to you an order from the U.S. District Court for the District of Columbia, dated September 2, 1982, compelling your testimony today and immunizing you from its use against you in a criminal case.

At this time, I would like to read into the record this order.

In the U.S. District Court for the District of Columbia, In Re U.S. Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice.

Order: "On consideration of the application by the U.S. Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice, and the memorandum of points and authorities, and exhibits, in support thereof, the court finds that the procedural requistes set forth in 18 U.S.C. section 6005 for an order of the court have been satisfied. Accordingly, this 2d day of September, 1982, it is:

[4] "Ordered that Angelo J. Errichetti may not refuse to appear and to testify before the U.S. Senate Select Committee to Study Law Enforcement Undercover Activities of Components of the Department of Justice on the basis of his privilege against self-incrimination, and it is

"Further ordered that no testimony compelled under this Order (or any information directly or indirectly derived from such testimony) may be used against Angelo J. Errichetti in any criminal case, except a prosecution for perjury, giving a false statement, or otherwise failing to comply with this Order."

And it is signed by U.S. District Judge Harold H. Greene.

Will you repeat the question?

Mr. WHEELER. Mr. Errichetti, do you know a gentleman named Melvin Weinberg?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. When did you first meet Melvin Weinberg?

Mr. ERRICHETTI. I believe it was December 1978.

Mr. WHEELER. Would it refresh your recollection if I suggested December 1, 1978?

Mr. ERRICHETTI. Could be.

Mr. WHEELER. Had you talked to Melvin Weinberg on the telephone before that date?

Mr. ERRICHETTI. No.

[5] Mr. WHEELER. Mr. Errichetti, have you read a copy of the interim report that Mr. Neal and I gave to this committee on August 18 of this year?

Mr. ERRICHETTI. Have I read it, sir?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. No.

Mr. WHEELER. Has anyone discussed it with you?

Mr. ERRICHETTI. No.

Mr. WHEELER. Have you talked to Joe DiLorenzo since his appearance here in Washington last week?

Mr. ERRICHETTI. No.

Mr. WHEELER. Did you talk with him about his impending meeting down here before he came down last week?

Mr. ERRICHETTI. No. I talked to my nephew, I guess it was December—I am sorry, February 1980, I guess, when the newsprint blared out the Abscam investigation and I stated to my nephew emphatically, I said Joseph, please, just tell the truth; do not deviate from anything, just tell the truth as to what you know, whoever asks you, whether it be the Federal Bureau of Investigation or whether it be any committees—not committees, Grand Juries; please just tell the truth.

I said nothing else. That is all I have ever said to my nephew at that particular time, and we have tried to keep away from the subject thereafter.

Mr. WHEELER. You say you have tried to keep away from [6] the subject thereafter. Have you in fact had discussions with your nephew since that about Abscam?

Mr. ERRICHETTI. I believe it was during the trial period which was about 2 years ago when he testified in Federal Court in New York. Prior to that, I did not talk to him. After that, again the same admonishment, please tell the truth.

Mr. WHEELER. Mr. DiLorenzo was interviewed by the FBI on June 10, 1980, which was just a couple of months after your indictment was handed down in New York.

Did you talk to him at any time after that period, after the indictment and before June 10, 1980, when he was interviewed by the FBI?

Mr. ERRICHETTI. No, I did not.

Mr. FURST. Do you mean specifically about Abscam?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. We talked but we only brushed it. He was very nervous, understandably. His sister—my sister was his mother. We tried to refrain from that particular topic in the house.

Mr. WHEELER. You said that you met Melvin Weinberg for the first time in December 1978, and that you had not talked to him on the telephone before then.

When did you first hear of Mel Weinberg?

Mr. ERRICHETTI. That day.

[7] Mr. WHEELER. Who told you about him?

Mr. ERRICHETTI. A gentleman named Billy—if I may, sir, I will just try to give you a little prior, I guess, generalization of how it came to that point.

I would guess sometime in September 1978 Billy came to my office at the request of someone that was either in the purchasing department or someone had gotten a phone call he was interested in bidding and/or evaluating our telephone service and our leasing of trucks and those kinds of things. I said fine. He came in——

Mr. WHEELER. Excuse me. By "our," you mean the city of Camden?

Mr. ERRICHETTI. Yes, sir. He came in and I immediately directed him to our purchasing agent to analyze and ask the questions that were, you know, pertinent to his particular avenue of business and there was something that could be done that was saving the city money, fine, discuss it with the purchasing agent, which he did.

And then he called a couple of times in the same realm and I asked him a question about railcars because there was a friend of mine who was a neighbor who at that time was trying to obtain the leasing of railcars for the transportation of coal. I just asked him a question, do you know anyone who has leasing ability or availability of railcars for the transportation of coal, particularly from the West Virginia area into the Philadelphia area, [8] specifically for Philadelphia Electric Co. And he said, yes, I got somebody, a guy named Mr. Krauss. I was invited to go up to New York to meet Mr. Krauss along with Mr. Eden, and I met a fellow named Rosenberg who was there at that time. And we talked about that particular subject, and I gave him the name of James Meiler who was a person that was inquiring about the railcars, and they should communicate directly versus an intermediate. And I started talking about the opportunities of a depressed city that needed help desperately in trying to revitalize it, and that we welcomed industrial growth and port use for whatever, and he said that could very well be. I said I am making—a study is being conducted. We would like to establish a free trade zone in our city so we could try to entice businesses that have that kind of trade opportunities to be able to relocate in Camden. He came to Camden. I am going to guess in the month of November. And he said——

Mr. **Wheeler**. This is still Mr. Eden?

Mr. **Errichetti**. Yes.

That there was a possibility of a small package refinery, that there was some interest, that he wanted to pursue it, that there was land available for that particular unit of the refinery. Because of EPA rules and regulations, some are prohibited and some are not, and because the land in question was zoned for industrial purposes, and that it was in need of [9] jobs and a depressed area, I said absolutely, we would have no problems finding the ground for that particular company, he should pursue it. He came back a week or so later, and he used my phone and called a company in California because I had turned him over to someone to show him some land we had in Camden, and there was a piece of land that he thought could suit this small packaging refinery.

He called this company, 713—not 713, it was California, CA something. He talked about there appeared to be a site, and the person came back and said we need financing. He said are loans available for financing? I said, sure, there are Government loans and State loans that offer—EPA loans or SBA loans, whatever the needs of the company are in particular to how much front money they had in regards to their operation.

I got a phone call—my secretary did, I did not, that there was a group in New York that was willing to invest and provide the funds for this packaging unit, and when could I be made available to go to New York. They would pick me up. And she relayed that message to me. And I told her make it—if they are going to pick me up and come by plane, then going to New York is only a matter of, by plane, 35 minutes so I could go in the morning and be back, which she relayed to them. And they gave a date.

I went to Atlantic Aviation, Philadelphia, Pa., which is a private hangar and, lo and behold, a plane did come, [10] a pilot, whisked me away to Long Island.

Upon landing, I met—was greeted by, rather, Abdul Industry representatives, and I believe it was—by their names introduced to me as Jack McCloud, Mel Weinberg, Anthony Amoroso, Bruce Bradley, and Billy who was there.

Mr. **Wheeler**. Let me back up on a couple of those areas, Mr. Errichetti.

Mr. **Errichetti**. I think Amoroso.

Mr. **Wheeler**. The first time that Mr. Eden met you was in a business context sometime in approximately September 1978?

Mr. **Errichetti**. Somewhere there.

Mr. **Wheeler**. And you have discussed—you have just testified to several possible transactions that you and Mr. Eden discussed. You said that on the first meeting, you referred him to the purchasing agent for the city.

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Incidently, for the record, you were the mayor of Camden?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. And you were the mayor of Camden throughout 1979?

Mr. **Errichetti**. From 1973 to 1979.

Mr. **Wheeler**. When was your last day in office?

Mr. **Errichetti**. June 30, 1981.

[11] Mr. **Wheeler**. At this first meeting with Mr. Eden, you referred him to the purchasing agent, but you said he then called you several times after that.

Since you referred him to the purchasing agent, did he explain why he was bypassing the purchasing agent?

Mr. **Errichetti**. The subject of the conversation was not related to telephones and/or to the leasing of trucks. He had brought in people, one from Cleveland, another from New York, to pursue that avenue. So there was nothing to discuss in regards to that original conversation. It was then turned over, not only from he and I but other people on my behalf, to the city purchasing agent and, on his behalf, I believe it was two other gentlemen, one from Cleveland, I remember, and the other was from New York. They dealt with one another. Nothing ever consummated.

Mr. **Wheeler**. The Krauss and the Rosenberg you referred to, were you informed at that time, namely when you were introduced to them, that they were partners of Bill Eden?

Mr. **Errichetti**. Partners?

Mr. **Wheeler**. Yes.

Mr. **Errichetti**. Maybe a loose partnership. I do not know by corporation or signatures or an act. I do not know.

Mr. **Wheeler**. One of the transactions that you did not mention in describing the transactions you discussed with Mr. Eden was a possible transaction with respect to a crane, a [12] leaseback for a marine crane. Do you recall that?

Mr. **Errichetti**. Yes, but that was again—that is true, what you are saying. But again it was referred to the port authority which is an autonomous body within the city of Camden confines. That is under the jurisdiction of the State of New Jersey. They are not under the city's jurisdiction.

So I referred them to, at that time, Joseph Balzoni, who was the executive director—deputy executive director, so they conversed.

Mr. **WHEELER**. What was the proposal with respect to the crane?

Mr. **ERRICHETTI**. What was the proposal?

Mr. **WHEELER**. Right.

Mr. **ERRICHETTI**. Best I remember was one of supplying or leasing of a crane that was, I believe, utilizing the need for containerization, if I remember correctly.

Mr. **WHEELER**. Mr. Eden was going to arrange for the lease of a crane to the port?

Mr. **ERRICHETTI**. That was what was purported to me.

Mr. **WHEELER**. Did you and Mr. Eden have any discussion of the possibility of your getting some kind of payment with respect to that?

Mr. **ERRICHETTI**. I do not remember any conversation to that, sir.

Mr. **WHEELER**. Would it surprise you if I told you that [13] Mr. Eden has informed the FBI that, in the deal that he discussed with you with respect to the crane, the arrangement was that you would get 5 percent of the price of the crane if the deal went through?

Mr. **ERRICHETTI**. Well, nothing surprises me, what people have said. But the mere fact—the truth of the matter is, I never discussed any remuneration of 5 percent, 1 percent, or no percent. It was not within my realm. It was one of—there was no discussion even of commission because there were no illegal transactions between myself and Rosenberg and/or Eden. Nothing was ever consummated and I do not know of any discussions that related to any kickbacks or whatever have you in regard to my office, meaning my office as the mayor. There was nothing in regards to that discussion with Mr. Eden and/or Mr. Rosenberg.

Mr. **WHEELER**. Was it unusual for you, as the mayor of Camden, to travel to New York City to discuss financing with private parties.

Mr. **ERRICHETTI**. I traveled to Nigeria to try to bring about economic development for our city.

Mr. **WHEELER**. You said you would?

Mr. **ERRICHETTI**. I did, among other places. So, when it was a question of trying to revitalize and trying to bring economics to a depressed, dying, minority, heavy-burden city, I was in the forefront. So, I guess the answer to your question [14] is yes.

Mr. **WHEELER**. Had anybody—by the time you arrived at the meeting on December 1, if that is the date, 1978, had anyone told you about Mel Weinberg, anything at all about Mel Weinberg?

Mr. **ERRICHETTI**. I never set eyes or heard his name.

Mr. **WHEELER**. Had you been told, by Mr. Eden or Mr. Rosenberg, who was going to be in attendance at the meeting before the meeting occurred?

Mr. **ERRICHETTI**. No. Just Abdul Industries. I didn't know the name of the company, and that they had the abilities to fund—this company had the abilities to fund. They had huge accounts in our country and that was the initial—that was Eden.

Now, when I got there and when we began to chat, the opening conversations were one of Mr. McCloud, who was purported to be the president, who represented himself to be the president, where he related to me, in front of everyone, that he was the president, authorized on behalf of Abdul Industries, and there was two sheiks involved and that was a big supporter and was instrumental in their, I guess, survival, for a better word, and that they were—had a liaison between [deleted] [1] Margo Kennedy, who was stationed in New York to oversee and make sure that things were handled in a business fashion, and that he was a **[15]** great contributor to the Catholic Church in Boston and that he was a great contributor of financial aid to the politicians in Boston. So he represented himself as a semi or—political contributor of great magnitude and had the strength and support of [deleted].

Mr. WHEELER. What were you told about Abdul Enterprises by Rosenberg and Eden before you went to the meeting?

Senator INOUYE. Could I follow up and ask you whether you did investigate whether the person did have any connections with [deleted].

Mr. ERRICHETTI. Senator, I do not know how you do that, and I am an astute politician—I was an astute politician.

Senator INOUYE. You did not call [deleted] office?

Mr. ERRICHETTI. No. I had supported and, by the way, I was the first Senator—it was the political implications that—I was the first Mayor and State senator in New Jersey in that early time to come out for [deleted] against [deleted], and I do not know whether that was a ploy or whatever in regards to utilizing the [deleted] name. But I felt very strongly about that name, and the inference was there, sir.

Senator INOUYE. You had no reason to doubt his veracity?

Mr. ERRICHETTI. Well, I guess, looking at hindsight, maybe I might have had some doubts about it, but I did not. **[16]** He came over very impressive, meaning that what he said sounded sincere, truthful. There was no reason to tell me other than—there was nothing I had come there for except to try to have something established in that city of Camden and that we were just going to supply the funding, nothing else. So there was no need for me to delve into whether he was lying or telling the truth or whatever.

Senator INOUYE. Thank you.

Mr. WHEELER. What were you told about Abdul Enterprises before the December 1 meeting?

Mr. ERRICHETTI. By Mr. Eden?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. That they were a large company that was established in New York; that they had the support of [deleted] that they had the abilities to fund large amounts of money for capital venture and/or dollars for—that needed money.

Mr. WHEELER. Were you told anything by anyone else other than Mr. Eden about Abdul?

Mr. ERRICHETTI. No. Just that the day I was there with Mr. McCloud, they mentioned some of their accounts.

[17] Mr. WHEELER. How about before that?

Mr. ERRICHETTI. No.

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[1] The omission of sensitive information in these hearings is identified by "[deleted]." For a complete explanation of why, see S. Rep. No. 97-682, 97th Cong., 2d Sess. V–VI (1982).

Mr. WHEELER. Did you do any independent checking on the status of Abdul Enterprises before you went to the meeting on December 1?

Mr. ERRICHETTI. No, because they were not going to do anything with the city of Camden. They were going to do something for someone else, meaning, Mr. Eden and his group, that were going to build a packaging—it was not involving the city of Camden in no way, shape, or form.

Mr. WHEELER. Is it accurate to say, when you arrived at the meeting on December 1 you had no independent knowledge that you had obtained from checking or from extensive discussions with Eden or Rosenberg, or anyone else about either the personnel involved in the Abdul Enterprises, or about Abdul Enterprises itself? Is that an accurate statement?

Mr. ERRICHETTI. That is an accurate statement.

Mr. WHEELER. Before you arrived at the meeting on December 1, had you had any discussions with Mr. Eden or Mr. Rosenberg about the possibility of your receiving some kind of a payoff from Abdul Enterprises?

Mr. ERRICHETTI. No—I mean, for what?

Mr. WHEELER. For anything?

Mr. ERRICHETTI. No.

Mr. WHEELER. Had you had any discussions with Mr. Eden or [18] Mr. Rosenberg before the meeting on December 1 about the possibility of Abdul Enterprises getting involved in Atlantic City, in gambling, in the casinos?

Mr. ERRICHETTI. You know, there was conversation. Whether they rushed upon that subject or not, I really do not remember. I do not know that—I could not answer that question yes or no. If it was very minute, if it happened at all, I do not remember.

Mr. WHEELER. Had you, Mayor Errichetti, before December 1, 1978, ever accepted a bribe before, as the mayor of Camden?

Mr. ERRICHETTI. Absolutely not.

Mr. WHEELER. Had you ever solicited a bribe before December 1, 1978?

Mr. ERRICHETTI. Absolutely not.

Mr. WHEELER. Had you ever paid a bribe to any other politician before December 1, 1978?

Mr. ERRICHETTI. Paid a bribe?

Mr. WHEELER. Right.

Mr. ERRICHETTI. For what purpose?

Mr. WHEELER. For any purpose.

Mr. ERRICHETTI. No, sir; not that I know of.

Mr. WHEELER. Mr. Errichetti, I have in front of me, and I will be glad to share it with you and your counsel—I have only one copy, but I will hand it down to you, if you ask—I have here a copy of a transcript of a meeting of December 1, 1978, attended by FBI agent John McCarthy, whom you knew by the name [19] McCloud, Mayor Errichetti of Camden, New Jersey, Mel Weinberg, and Bill Eden, and during the course of that conversation, and I am referring now to page 2 of this transcript, the following dialog occurs:

> WEINBERG. We are talking now—how much we talking, dollars and cents it is gonna cost for you to take care of all of this?

Errichetti. I'll be truthful—I don't know. There is feasibility—there is things you have to put up with.

Eden. We're talking—he is not asking that question. We're talking——

Errichetti. Whatever you do—I don't want to discuss it.

Eden. You haven't.

Errichetti. I don't—I don't want to talk about it. You talk to this gentleman. Whatever they——

And then the conversation goes on to something else.

Was that conversation pertaining to—what was it you did not want to talk about in that conversation on December 1, Mr. Errichetti?

Mr. **Errichetti.** OK.

That conversation occurred after they talked about the financing of a package unit in Camden, which is not part of that tape, either deliberately eliminated it, or whatever. The conversation that was taking place in regards to Atlantic [20] City, which is not there, was basically one of the opportunities that were in Atlantic City, and were they opportunities that were of a magnitude.

I said absolutely. As long as the entrepreneur had the people that can pass the muster in regards to their background checks, and as long as the money is clean, there is absolutely no problems obtaining a casino license, because I helped write the legislation for casino control as a senator, and they were very explicit, and they were very detailed, and very easy to follow, point by point, so that those that had the abilities to put up those kinds of dollars and comply with the color of paint and building size and casino size and bathroom size, and so forth—absolutely no problems to obtain a license to operate a casino.

They asked the question, "Well, what would it cost to put this together?" And the reference was made as to the architects, which I said had to be done in regards to this set of rules and regulations. There had to be planners, market analysts, architects, builders. There had to be a flood of people—lawyers, and whatever have you—to assemble this package, to present it to the commission, and whether it cost $300,000 or $400,000, I did not know.

OK.

That conversation was not in reference to kickbacks, or whatever have you. That was a pure legitimate answer to a [21] legitimate question that was taken out of context, to make it appear that I was asking for dollars for my intervention. There was no need for my intervention.

OK.

Mr. **Wheeler.** But there was discussion, in any event, of a casino license in Atlantic City at that meeting, and this was all in reference to that; is that correct?

Mr. **Errichetti.** I am sorry?

Mr. **Wheeler.** There was discussion of Abdul Enterprises obtaining a casino license in Atlantic City, and this discussion was all pertaining to that?

Mr. **Errichetti.** The exploration of it.

Mr. **Wheeler.** Are you aware, and again I have a copy of the transcript in front of me, that right after that meeting, Mr. Eden stayed and talked to Mr. Weinberg?

Mr. **Errichetti.** Not in my presence.

Mr. WHEELER. That is right, after you left the meeting, and Mr. Eden said:

> EDEN. I know how much Atlantic City is gonna cost.
> WEINBERG. Well——
> McCARTHY. How much?
> EDEN. He said between 350 and 400, and means not another penny. [Inaudible].
> McCARTHY. Who are we talking about? Is that just him. Or——
> [22] EDEN. That's him.
> McCARTHY. Just for him?
> EDEN. Yeah.
> WEINBERG. (Inaudible).
> EDEN. In other words, the contact you had—would be, he gets it and he will do the distribution. We're not gonna know who he is taking care of.
> McCARTHY. He is taken care of with that?
> EDEN. He will take care of everybody.
> WEINBERG. How much does he want, do you know?
> EDEN. He asked me for a hundred. I told him that's steep.
> McCARTHY. That is.
> WEINBERG. He'll take 50.

This occurs after Eden proposed to have called you on the telephone.

Did Eden in fact call you at that meeting and discuss with you possible political payoffs in order to assist Abdul Enterprises, assisting them to obtain a license in Atlantic City?

Mr. ERRICHETTI. You are telling me, after I left the meeting, and flew back home, and picked up my car and my driver—and that conversation, which is an integral part of that same meeting—he called me on the telephone and asked me those questions?

[23] Mr. WHEELER. I am not suggesting, Mr. Errichetti, where you were, or what the exact point in time is. But it is the same date, and it is after that initial meeting, and I am simply asking you, did you have a conversation with Mr. Eden on December first, after that first meeting?

Mr. ERRICHETTI. No, sir.

Mr. WHEELER. No conversation at all?

Mr. ERRICHETTI. Not to my knowledge.

Mr. WHEELER. Did you ever have a conversation with Mr. Eden, in which you discussed with Mr. Eden the possibility of your being able to guarantee a gambling license for Abdul Enterprises by political payoff?

Mr. ERRICHETTI. Mr. Eden, according to Mr. Weinberg now, when I met him alone on Long Island in January, and subsequent telephone conversations after the December meeting, where Mr. Weinberg called me on the phone, which would be any time after December the first, and before January 6—it was a question of Mr. Eden not being involved. They were going to push him aside. There was no need for Mr. Eden to be around and/or Mr. Rosenberg.

That is the words of Mr. Weinberg, in addition to other things that he told me during that conversation.

Mr. WHEELER. Let me have a direct answer, though, to my question, Mr. Errichetti, and that is, after the December 1 meeting that we have just discussed, did you have a telephone [24] discussion with Mr. Eden, in which you discussed with Mr. Eden the possibility of your assisting Abdul Enterprises in obtaining a gambling license in Atlantic City, by making political payoffs?

Mr. ERRICHETTI. Sir, I do not remember, and I say to you, quite honestly, I do not remember a conversation of him representing that there was any kickback or payoff to me for services rendered. Does that answer your question?

Mr. WHEELER. Did you have a discussion with Mr. Eden at any time in which you talked about a scenario for effecting some kind of payoff in connection with the Atlantic City gambling, in which Mr. Eden would park a car, McCarthy would go over and give you a distinctly colored envelope that would have money in it?

Mr. ERRICHETTI. Mr. Eden represented that at the meeting.

Mr. WHEELER. At which meeting?

Mr. ERRICHETTI. That I was present.

Mr. WHEELER. Excuse me?

Mr. ERRICHETTI. Eden represented at that meeting——

Mr. WHEELER. December 1?

Mr. ERRICHETTI. Yes. That he remembers relating to another incident where he was involved with someone, where they had the yellow envelope, and they waved from a car, and whatever have you. It was pertaining to him. I listened to him [25] say that in person, not on the telephone.

Mr. WHEELER. Who else was present when Mr. Eden related that story?

Mr. ERRICHETTI. My guess, had to be Weinberg and McCloud. I just assume that to be.

Mr. WHEELER. When Mr. Eden related that story in your presence, did you understand that he was relating the story pertaining to some kind of political payoff?

Mr. ERRICHETTI. To me—I had no connection in my mind.

Mr. WHEELER. But it was a past political payoff that he was describing?

Mr. ERRICHETTI. He was describing something he had done in the past, how things can be done, and he related about this fellow in the parking lot waving an envelope, a green envelope, and waving back like it was a waving party, one to acknowledge, and one to say he got it, or something to that effect.

Mr. WHEELER. And that something in the past that he was referring to was a political payoff?

Mr. ERRICHETTI. Not me.

Mr. WHEELER. To someone else, that was your understanding?

Mr. ERRICHETTI. That was my interpretation.

Mr. WHEELER. What was the context that Mr. Eden raised this political payoff story in the past?

Mr. ERRICHETTI. Truthfully, how it came about?

Mr. WHEELER. Yes.

[26] Mr. ERRICHETTI. Honestly, I do not recall.

Mr. WHEELER. Was it a general discussion of political payoff?

Mr. ERRICHETTI. No.

Mr. WHEELER. He just brought it up——

Mr. ERRICHETTI. I do not know sometimes how people deviate in a discussion, yes, I remember something to that effect. It goes back to something I was saying earlier in regards to the feasibility studies requiring lawyers and costs of that for services rendered by professionals to put the package together in regards to those needs applicable to the casino industry, and the statutes presented by them, by a professional organization, whether it be accounting firms, the whole professional staff that is required to put together a package.

Mr. **Wheeler**. Well, did you schedule another meeting with the representatives of Abdul Enterprises on December 1, that is, did you arrange for a subsequent meeting on that date?

Mr. **Errichetti**. Not specifically, no.

Mr. **Wheeler**. You did not talk about having a meeting the following Wednesday, with Mr. McCarthy?

Mr. **Errichetti**. I think so, yes, now that you bring it up.

Again, please bear in mind I have not looked at the files for 3 years. I ask you to refresh my memory. I have no problem with that.

[27] Mr. **Wheeler**. The tape that we have just been just been referring to does indicate substantial discussion about a subsequent meeting that month, in particular the following Wednesday, between you and Mr. McCarthy.

Mr. **Errichetti**. Never happened, that is why it escapes my mind.

Mr. **Wheeler**. That meeting did not occur?

Mr. **Errichetti**. Not to my knowledge.

Mr. **Wheeler**. Do you recall why it did not occur?

Mr. **Errichetti**. Not really.

Mr. **Wheeler**. Would it refresh your recollection if I told you that Mr. McCarthy's mother died shortly after the December 1 meeting?

Mr. **Errichetti**. If you say so, sir. I do not remember. If it is a fact, it is a fact. I know it did not occur. There was a conversation about the possibility of a meeting, and I believe he called me or something—it was called off for whatever reason. I do not remember.

Mr. **Wheeler**. Did you meet with anyone from Abdul Enterprises, at any time between that first meeting and the meeting of January 6, 1979, that you have just referred to?

Mr. **Errichetti**. Only by phone conversation.

Mr. **Wheeler**. How many telephone conversations did you have between that period, between December 1 and January 6, one or two, or several?

[28] Mr. **Errichetti**. Several, for a better word.

Mr. **Wheeler**. With whom?

Mr. **Errichetti**. Mel Weinberg.

Mr. **Wheeler**. All of them?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. None of them were with McCloud?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Who called whom? Did you call Weinberg, or did he call you?

Mr. **Errichetti**. He called me.

Mr. **Wheeler**. On each occasion?

Mr. **Errichetti**. Each occasion.

Mr. **Wheeler**. Would you describe the substance of those conversations—let me ask you this first.

How soon after the December 1 meeting did you hear from Mel Weinberg again?

Mr. **Errichetti**. A week, or so.

Mr. WHEELER. And in between the time of the December 1 meeting and the time you first heard from Weinberg, did you have any more discussions with Rosenberg or Eden?

Mr. ERRICHETTI. I may have, sir. I do not remember. There may have been.

Mr. WHEELER. Excuse me?

Mr. ERRICHETTI. There may have been, but I do not recollect what the conversation was.

[29] Mr. WHEELER. Was there any discussion between December 1, 1978, and the first time after that that you heard from Weinberg, in which you and Rosenberg, or you and Eden, discussed the possibility of your helping Abdul Enterprises to obtain the gambling license through political payoff?

Mr. ERRICHETTI. It does not ring a bell, sir.

Mr. WHEELER. What did Weinberg call you about on the first occasion after December 1?

Mr. ERRICHETTI. Weinberg, looking at it backwards now—it was the beginning of the indoctrination period by him to me in regards to Abdul Industries, and beginning to characterize the individuals in Abdul, and his strengths with the sheik's father in Nice, France, and the derogatory remarks about McCloud.

I do not want to elaborate about that, but they were derogatory, and I think he downgraded his abilities, and that he would like to chat with me, and talk to me further before I did any talking with McCloud.

Mr. WHEELER. What did he want to talk to you about, before you talked to McCloud?

Mr. ERRICHETTI. He wanted to fill me in as to where all the players were coming from, where the company was coming from, and the abilities, and the strengths and weaknesses of the sheiks. He was preparing me mentally, doing a job, for a better word, preparing me mentally to take me into his [30] confidence, to believe him, establish his credibility with me, that he had the ultimate say, that he was the financial wizard, and that nothing was approved unless he did so in regards to mathematics, and that he was the real brains, and that we had to chat.

Mr. WHEELER. Was there anything different about the substance of the conversations in December, and before the January 6 meeting?

Mr. ERRICHETTI. You mean specifically on a subject?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. No. I think it was just one of his building himself, and tearing others down, meaning within the organization of Abdul, so that I could establish the contact and believe him and trust him, and become his comrade in regard to conversations, and things to do. So it became that kind of a fashion.

Mr. WHEELER. In any of those conversations in December of 1978, did Weinberg discuss with you political payoffs?

Mr. ERRICHETTI. Not the word political payoffs. I think the favorite expression was you have to understand these Arabs. They just got off the camel's back. They are backward people. They are whimsical, preparing me for the onslaught that was to occur thereafter.

Mr. **Wheeler**. At any time before January 6, 1979, did you have any discussion with the representatives of Adbul [31] Enterprises about the possibility of your trying to assist them in getting the gambling license in Atlantic City by means of making payoffs to members of the Casino Control Commission?

Mr. **Errichetti**. Not to my knowledge, no. They wanted to visit—they had not been in Atlantic City, they expressed, and they wanted to go to Atlantic City, to spend a day or so, when they did, that was a little further down in January, after the January 6 meeting.

Mr. **Wheeler**. You had a meeting with Weinberg on January 6, 1979?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. And that was in New York?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. At the Blue Dawn Diner?

Mr. **Errichetti**. Outside, in the parking lot.

Mr. **Wheeler**. How long did that meeting last?

Mr. **Errichetti**. Thirteen minutes, half hour.

Mr. **Wheeler**. How did you get there?

Mr. **Errichetti**. I was driven there by my nephew.

Mr. **Wheeler**. Your nephew is Joe DiLorenzo?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. You were driven there from Camden?

Mr. **Errichetti**. Yes, sir, I assume, Camden or Trenton, whereever I was.

Mr. **Wheeler**. You drove from Camden to New York for a [32] 15 minute meeting with Mel Weinberg?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Did you know it was going to be approximately a 15 minute meeting, when you drove up there?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you think you were going for——

Mr. **Errichetti**. He said it was important, he wanted to chat with me. Rather than over the telephone. He said it was important, please come up.

Mr. **Wheeler**. Did he tell you what the topic was going to be?

Mr. **Errichetti**. On the phone, no. On the telephone, no, he did not tell me.

Mr. **Wheeler**. Was it customary for you to travel that kind of distance to talk to somebody that you did not know what the topic was going to be, and it was a person you had met only 1 month before?

Mr. **Errichetti**. As I said, in these conversations that occurred between him and me in regards to the opportunities that Abdul Industries, quote unquote, Arab sheiks, and that he was basically in command, that we should confer, and that there should be no further conversations with anyone else, unless he chats with me first. So this was basically prior to the meeting with McCloud and the entourage, and he wanted to chat with me, because I could not get there to see him, except I think it was on a Saturday. I think it was a Saturday.

[33] Mr. **Wheeler**. January 6 was a Saturday?

Mr. Errichetti. Again, I don't know what the date was or what the day was, but I know when it was I did have time to get up there and back without too much inconvenience to myself, except the long ride.

Mr. Wheeler. Did you know that this was a meeting that was going to benefit you personally or did you think it was a meeting that was going to benefit the city?

Mr. Errichetti. This became—had nothing to do with the city. The conversations were Mel Weinberg and myself basically. So to answer your question, I would say personally.

Mr. Wheeler. But you didn't have any idea how it was going to benefit you personally?

Mr. Errichetti. Not really. I didn't have the abilities, nor did I have the influence, to direct that line of conversation and/or action. It had to come from his side.

Mr. Wheeler. The car that Joe DiLorenzo drove you up there in that day was the city car, wasn't it?

Mr. Errichetti. It was a leased car that the city paid the lease; yes, sir.

Mr. Wheeler. Did you have some kind of understanding that you could use the city vehicle for personal reasons?

Mr. Errichetti. Yes, sir.

Mr. Wheeler. Was that in writing?

Mr. Errichetti. That was policy.

[34] Mr. Wheeler. Who had established that policy?

Mr. Errichetti. When I came to office in 1961, by the Mayor then, Al Pierce.

Mr. Wheeler. He told you that?

Mr. Errichetti. Not only myself but everyone that had a car. That was like a fringe in regard to pay being on the low side and they allowed cars to be driven for not only business purposes but also for the convenience of the gentleman or lady, whoever it may be, for their own use.

Mr. Wheeler. And the car could be filled up by Joe DiLorenzo at the city gas tank?

Mr. Errichetti. At that time, we were only allocated 15 gallons a month so I abided by the rules and regulations and I paid for the gas that was over and above that.

Mr. Wheeler. Who requested the meeting on January 6? Did Weinberg request it?

Mr. Errichetti. Mr. Weinberg.

Mr. Wheeler. What was the topic? What did you discuss when you got up there?

Mr. Errichetti. The impending meeting that was going to occur in Atlantic City and Cherry Hill and that I was not to discuss anything in detail with him, just to listen because he was developing in his mind with Tony, who he had a great deal of respect for at that time, and Tony was a subordinate, meaning to McCloud; McCloud was the—the inference—or the chain [35] of command was McCloud up at this level and the other gentlemen below him and Amoroso and Bruce Bradley being the chauffeur.

Mr. Wheeler. Tony was then known to you as Anthony DeVito and you now know him as Anthony Amoroso?

Mr. Errichetti. Yes.

Mr. WHEELER. And Weinberg said there was going to be a meeting and he wanted you to listen?

Mr. ERRICHETTI. Yes, and that he would find out exactly what was to occur prior to. As I said to you earlier, in regards to this indoctrination period, the feeding of the mind, my mind—to him was one of there was to be, between Amoroso and Mr. Weinberg, the opportunity that if the sheik who, as I said earlier, are whimsical—and the theme has to be that I have to do everything. I had the abilities to move mountains, get things done, that I was the powers to be, that I was going to be portrayed so that the sheik would then have full confidence that they had someone that could get things done for them. In essence, it was basically one of where Weinberg and Amoroso, from where I was sitting, were either conspiring to downplay or downgrade or get rid of McCloud at that stage because of the distaste that Weinberg had for McCloud. There seemed to be a genuine, either in the presence—at later dates and when he told me in private—that there was either a personality conflict or one of maybe—maybe he was one of—in the way, so to speak, and had to be removed so that Tony could [36] assume his position and then things would run smoothly in regard to whatever would occur in the future.

Mr. WHEELER. And what was in it for you? What was in it for you?

Mr. ERRICHETTI. We would share.

Mr. WHEELER. Share in what?

Mr. ERRICHETTI. Share in any dollars that could be put together or put forward. There was no game playing. It was in general speaking. Meaning there was nothing said; we are going to do this, to do that and the following. It was one of—I used the word earlier—I guess to defraud the sheik would be a better word, a plan or contrivance by Mr. Weinberg representing to me that Amoroso, or DeVito, who would be a part of this particular venture——

Mr. NEAL. Mayor, by this time you know then——

Mr. ERRICHETTI. I am sorry?

Mr. NEAL. By the conclusion of this conversation on January 6, you are telling us Mel Weinberg was proposing to you, in veiled terms, a number of possible nefarious plots to make money for you and for him?

Mr. ERRICHETTI. Yes, and Amoroso.

Mr. NEAL. And DeVito?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. And that McCarthy was not going to be a part of the conspiracy?

[37] Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. And you were going to get him out of the way?

Mr. ERRICHETTI. Not me, they.

Mr. NEAL. And you were going to help them by not going to McCarthy?

Mr. ERRICHETTI. I was going to go to McCarthy but I was going to go to McCarthy and tell him what he wanted to hear.

Mr. NEAL. In this conversation, was there any fleshing out of these plots, what these plots might be, or just schemes to make money?

Mr. **Errichetti**. Yes, not at that particular meeting. It was one of portraying to me that I had to come on as the man that could do all things in all seasons and that I was to come on strong and represent that I could do anything and everything. It was all baloney. It was not—I guess a better word—baloney; I will use that word.

Mr. **Neal**. You were going to scam McCarthy—help him scam McCarthy?

Mr. **Errichetti**. Along with Weinberg and DeVito.

Mr. **Wheeler**. Did you agree to do that, when you met with Weinberg on January 6?

Mr. **Errichetti**. It sounded very plausible. I had no love for the sheiks and Arabs. At that time I think the world frame was they were sucking our blood with oil, making billions and billions of dollars. I am sure you are all aware [38] of the stories of the sheiks coming in and throwing their money around. It was a fairy tale. That was true. You could read in the papers almost every day, they could take full force with their entourages. It was strictly one of you are here today and gone tomorrow with those people, meaning Weinberg's speeches, and that they would not, you know, keep people on for a long length of time. They would go out and buy an airplane for $9 million; they would buy it and cancel it—buy it somewhere else. Those kinds of lavish wealth that was squandered by them, and Mel says we should get it.

Mr. **Wheeler**. Is it accurate to say that at that time, January 6, 1979, at the end of that meeting, that in your mind you believed that you and Mel Weinberg were at that point engaged in a conspiracy to defraud the sheiks?

Mr. **Errichetti**. And Amoroso, don't forget him.

Mr. **Wheeler**. You and Weinberg and Amoroso?

Mr. **Errichetti**. Yes——

Mr. **Wheeler**. And you say that that is what Weinberg told you?

Mr. **Errichetti**. How else—these are all company people. They are not outsiders saying let's go get somebody else. Representing to me that this is the chief financial officer that approves all the loans.

Mr. **Wheeler**. Weinberg?

Mr. **Errichetti**. Weinberg. Came from the Hapsburg [39] family in Switzerland and whatever have you. Very impressive but not true—or true, who knows?

Mr. **Wheeler**. On January 6, did Weinberg tell you when the meeting with McCloud was to occur?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. When was that to occur?

Mr. **Errichetti**. It was to occur in Atlantic City. They were coming down for a visit.

Mr. **Wheeler**. How far in the future?

Mr. **Errichetti**. A couple, 3 days later—I don't know the time frame but shortly thereafter.

Mr. **Wheeler**. Did you arrange another meeting prior to that with other people and Mr. Weinberg?

Mr. **Errichetti**. No. What happened was I met with Mr. Weinberg the day before they came in, meaning, Margo Kennedy and——

Mr. **Wheeler**. McCloud?

Mr. ERRICHETTI. McCloud and Amoroso and I believe Eden was there and I believe Rosenberg was there. They came the following day. I spent the greater part of that evening—I would say from either 5 or 6 o'clock in the evening to midnight and he had me alone and he began his speech of the opportunities that could be available, again reinforcing what he said over the phone and at the prior meeting, just wonderfully building it up in regards to the opportunities that were [40] there and they were going to be pursued. He would make sure, under his direct instructions, that I was not to meet—for instance, if I were to meet the sheik, and the sheik in this case was McCloud, I was to meet with him either hours before or a day before or whatever and to receive the full instructions as to what to say, how to say it, when to say it, even though—and everything that was said by me on tapes was instructed by Mr. Weinberg and 99 percent of it was baloney.

Mr. WHEELER. Now, Mr. Errichetti, the meeting that you had with Mr. McCloud was on January 9, 1979, and I have the tape transcript here. You also had a meeting on January 8 with Weinberg, Rosenberg, and Eden, didn't you?

Mr. ERRICHETTI. Yes. But I am saying, the majority of it was with Mr. Weinberg.

Mr. WHEELER. But at the meeting, when Weinberg, Rosenberg, and Eden were all present, didn't you discuss with them possible payoffs to casino control commissioners in order to insure a license for Abdul Enterprises?

Mr. ERRICHETTI. I may. I am not saying I did not. I may have. You have the tapes. I don't know.

Mr. WHEELER. Didn't you in fact discuss specific dollar numbers; namely, that you would get—you were looking for $50,000 and the number was reduced at that meeting to $25,000?

Mr. ERRICHETTI. OK.

Let me go back again to prior conversations. When I said [41] explicitly, unequivocally to Mel, no ifs, ands, or buts, there is no commissioner needed for a payoff to approve a casino. You had to go by the book. This is a very simple procedure to follow. You can have it without giving anybody. His answer to me was, wait a minute. How are we going to get the money from the sheiks if you don't say you can do it? You have to go in and tell him, yes, I control this person; yes, I control the commission; yes, the money is there; I want $100,000, and so forth, whatever it might be. I had to establish that I was the man that could—of all things, as I said earlier. It was necessary. And I told that to Weinberg. There was no need for any kickbacks to any commissioners.

First of all, I only knew one of them, which was Ken MacDonald. I did not know the other four. I represented that, yes, MacDonald says, yes, he wants a kickback and he will share with the other four. That is absolutely a lie. It is not true, and Weinberg was aware that it was not true. But, yet, please, he says, how are we going to scam the sheiks if you won't go along, meaning me, and say that you could do these things unequivocally?

Mr. WHEELER. But Mr. Errichetti, the meeting on January 8 was not attended by Mr. McCloud and Mr. Amoroso. It was attended by you, Rosenberg, Weinberg, and Eden and the discussion was a payoff for a license in Atlantic City.

Mr. **Errichetti**. That is right. I said prior to that 9th [42]—8th, whatever it may be, I had a series of phone calls. I met with him alone outside the blue diner. These were all the things discussed. At the very last meeting, that 15-minute, half hour, I had to represent—that was the coup de grace, in regards to my ability to make things happen in Atlantic City and that I had complete control of the members of the commission and that they wanted a kickback in order to give them a license which was nonsense and an absolute lie.

Senator **Inouye**. Mr. Errichetti, after the January 6 meeting, 8, and 9, you were aware that you were directly involved in a conspiracy to defraud the sheik?

Mr. **Errichetti**. I would say for a better word, yes. Not defrauding the Government, not committing any illegal acts with the Government or a part of a bribery scheme or anything like that.

Senator **Inouye**. Were you aware that conspiracy to defraud the sheik was in violation of the laws of your State or the State of New York?

Mr. **Errichetti**. Maybe. I am not really sure.

Senator **Inouye**. You are a State Senator, aren't you?

Mr. **Errichetti**. Yes.

Senator **Inouye**. And a Mayor?

Mr. **Errichetti**. Yes, sir.

Senator **Inouye**. And you weren't aware that this was in violation of your laws and your ordinances?

[43] Mr. **Errichetti**. Maybe I didn't want to believe it.

Mr. **Furst**. Are you asking about the laws and the ordinances of the city of Camden?

Senator **Inouye**. The State of New Jersey or the State of New York or wherever these meetings were held.

Mr. **Errichetti**. I say if they were the laws, either I ignored them completely or didn't want to believe it.

Senator **Inouye**. As you said, the record will show that you were going to scam the sheiks. Scamming the sheiks is illegal or legal?

Mr. **Errichetti**. Let me clarify that, Senator.

Angelo Errichetti was not going to scam the sheiks. Mel Weinberg and Amoroso were going to scam the sheiks who were members of that organization, bona fide members of that organization, and were going to be aided by me.

Senator **Inouye**. And they were going to give you something in return for your——

Mr. **Errichetti**. And they were going to get it back.

Senator **Inouye**. And they were going to give you some money?

Mr. **Errichetti**. And for them to get their portion back; yes, sir.

Mr. **Neal**. Mr. Chairman, I wonder if I could ask this young lady if it would be possible to give us an expedited copy of this testimony.

[44] Mr. Chairman, there are some things we will need to have tomorrow for examination of the next witness; and I wonder if we could take 5 minutes and allow this young lady to call for whatever help she needs.

Senator **Inouye**. Without objection, so ordered.

[Brief recess.]

Senator **Inouye**. The hearing will resume.

Mr. FURST. Mr. Chairman, Mr. Errichetti would like to have an opportunity to complete his reply.

Mr. WHEELER. Yes.

Mr. ERRICHETTI. In regards to the previous answer, did I know I was doing wrong, yes, the answer is yes, I knew. I don't want to appear to be evasive in regards to answering your question forthrightly. Yes, the answer is yes.

Mr. WHEELER. Mr. Errichetti, back to this meeting of the 8th, and I am talking about the portion where the people present were you, Weinberg, Rosenberg, and Eden. Not only was there discussion about a payment of first $50,000, and that was dropped to $25,000, but isn't it a fact that there was also a discussion at that meeting about the manner in which the payment would be made; namely, this business about having the envelope, a distinctly colored envelope, handed to you in a car with McCarthy off to the side observing the event?

Mr. ERRICHETTI. That was one plan; yes. Not forwarded by me, but forwarded by someone else.

[45] Mr. WHEELER. Is it your testimony that it was a mere coincidence that that plan was discussed on January 8, 1979, and it was the same plan that was discussed on the tape, out of your presence, on December 1, 1978?

Mr. ERRICHETTI. That plan, which I knew nothing about at that December 1 meeting, which I heard for the first time at the meeting you are speaking about—it was a plan devised by Eden and others to perpetuate something in regards to the commissioners, the waving of the flag and so forth.

Mr. WHEELER. There was a meeting on January 9, 1979, attended by you and Mr. McCloud; isn't that right?

Mr. ERRICHETTI. The 9th?

Mr. WHEELER. That is right; the very next day.

Mr. ERRICHETTI. There was a couple of meetings then; yes.

Mr. WHEELER. There were a couple of meetings on January 9?

Mr. ERRICHETTI. Yes. Now, was that in Atlantic City?

Mr. WHEELER. That is right.

Mr. ERRICHETTI. OK.

Mr. WHEELER. And at the meeting with McCloud, you talked to him about a payoff to members of the Casino Control Commission?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And you talked about a number of $25,000?

Mr. ERRICHETTI. If you are reading off a sheet; yes.

[46] Mr. WHEELER. As a down payment?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And the ultimate figure was going to be $400,000?

Mr. ERRICHETTI. If I said it, sir—again, please forgive me; if you are saying it—I attest to it if I said it; if that is what I said, yes.

Mr. WHEELER. And when you say—and I will read to you just one sentence:

> Because they are going to guarantee me your license. All right. Then I can fucking guarantee that license that I want.

You were referring to guaranteeing Abdul Enterprises would be able to get——

Mr. ERRICHETTI. Yes, sir.

Mr. Wheeler. A gambling license in Atlantic City?

Mr. Errichetti. Yes, sir.

Senator Inouye. Will counsel yield?

Now, at this meeting, the sheik was not present?

Mr. Errichetti. No, sir. The sheik represented by McCloud.

Senator Inouye. Was a sheik present at this meeting?

Mr. Errichetti. No, sir. Not the one with the hair dress—I mean the head dress.

Senator Inouye. So you were not impressing anyone with your forthright statement?

[47] **Mr. Errichetti.** Yes, I was impressing McCloud, who was to report to the sheik that I could move and make things happen.

May I ask a question, sir?

I may have not fully understood the question you asked, Mr. Wheeler, the previous question.

Mr. Wheeler. I am not sure of the one you are referring to. I was simply asking you whether you had made, at that meeting with McCloud—you at least verbally committed to McCloud that you would in fact use $400,000, if he paid it to you, to guarantee that Abdul Enterprises would get a gambling license in Atlantic City, N.J.

Mr. Errichetti. As I said previously, that we had previous conversation, meaning Mel Weinberg and myself, as to the contents of what I was to say, and I was instructed to say that to impress Mr. McCloud so he could tell the sheik and get a go-ahead for that particular scam, for a better word.

Mr. Wheeler. And did you think by telling Mr. McCloud that that you would in fact get $25,000?

Mr. Errichetti. Weinberg said that was sufficient—you mean that speech that I made to him would suffice in getting that number back? Yes.

Mr. Wheeler. So at that point you were in fact defrauding McCloud and trying to get him to give you $25,000?

Mr. Errichetti. To do nothing, yes.

[48] **Mr. Neal.** Excuse me. It was Mr. McCloud, as a representative of the sheik, that you were deceiving with Mr. Weinberg?

Mr. Errichetti. Mr. Weinberg and I at that time had constructed this.

Mr. Neal. When did he give you these instructions?

Mr. Errichetti. The night before.

Mr. Neal. In what detail—the night before?

Mr. Errichetti. Yes.

Mr. Neal. On January 8th?

Mr. Errichetti. Yes.

Mr. Neal. Where?

Mr. Errichetti. At the Holiday Inn in Atlantic City.

Mr. Neal. At the Holiday Inn at Atlantic City, you met with Mr. Weinberg; you went over what you were going to say in front of Mr. McCloud the next day?

Mr. Errichetti. Yes.

Mr. Neal. Where was that?

Mr. Errichetti. Now it is the Penthouse.

Mr. Neal. Mel's penthouse?

Mr. **Errichetti**. It was called the Penthouse Casino that was going to be there later. But it is not finished. It is a Holiday Inn under renovation.

Mr. **Neal**. What time of day did you meet with Mr. Weinberg?

[49] Mr. **Errichetti**. Between 5 and 6 and 11 at night.

Mr. **Neal**. Where; where in the hotel?

Mr. **Errichetti**. In his room.

Mr. **Neal**. In his room?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. When did you get in?

Mr. **Furst**. May I have a moment?

Mr. **Errichetti**. I have a home in Longport which is 14 or 15 miles south of Atlantic City. I lived there. I did not register. Weinberg registered.

Mr. **Neal**. Did you call him? How did you know he was in?

Mr. **Errichetti**. I knew he was coming in so I met him there at that particular hour, 5 or 6 o'clock in the evening, and then we had met from that time on, and I left that evening to go back to Longport, which is only like 10 minutes away.

Mr. **Neal**. And during that meeting you prepared the scenario for the next day?

Mr. **Errichetti**. Yes.

Mr. **Neal**. Did he suggest to you that the amount—the amount to suggest to McCloud?

Mr. **Errichetti**. Mel suggested—not only suggest, told me exactly what was to occur in regards to me saying to Mr. McCloud the following, that there was a guarantee of the license, that there would be a remuneration or payoff, for a [50] better word, and that I was to receive $25,000, and that it would be arranged at a later date to pick up and he was to agree to that. He told me that in advance, the night before, meaning Mel Weinberg.

Mr. **Wheeler**. Did you discuss with Rosenberg and Eden before January 8 or January 9, either one, 1979, whether they knew that this was all supposed to be a scam?

Mr. **Errichetti**. I don't know if I discussed it. I don't think so.

Mr. **Wheeler**. At the meeting on January 8, 1979, when you were discussing this matter of a payoff of $25,000 and the scene of your receiving the money in the car and so forth, in their presence, did you think that they believed all that?

Mr. **Errichetti**. I don't know if they heard it. They may have been in the room, wherever it was, the dining room, I think it was a dining room, to be very honest with you. I think it was basically whoever had the tape on—it had to be McCloud. I was conversing with McCloud, not a screaming fashion or loud speaker but one of face to face or body to body. So whatever I was saying was for his ears and not for the general public.

Mr. **Wheeler**. I think you misunderstood me. I was talking about the meeting on the 8th, the day before you talked to McCloud, the meeting where you were there and Weinberg and Rosenberg and Eden, all present talking about the very same [51] topic.

Mr. **Errichetti**. They may have been present—yes, I am sure they were.

Mr. **Wheeler**. Do you think they knew what was going on?

Mr. **Errichetti**. I am sure they did.

Mr. **Wheeler**. What is it you are sure they knew?

Mr. **Errichetti**. The conversation was four people. I would have to assume that they understand English; that it was pretty clear in regards to what the general conversation was between the four of us.

Mr. **Wheeler**. Do you think that Rosenberg and Eden thought you were committing to make a payment to the casino commissioner?

Mr. **Errichetti**. Not really; no.

Mr. **Wheeler**. Do you think they thought it was a scam?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Did you talk to them about that?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Can you say to this day that they knew on January 8th what was going on?

Mr. **Errichetti**. I can only assume. No one knows for certain. But I would assume they would know. Maybe for some reason they don't, but it is hard to believe.

Mr. **Wheeler**. You had another meeting with Weinberg on January 11, 1979; is that right?

[52] Mr. **Errichetti**. If you say so.

Mr. **Wheeler**. Well, on January 11——

Mr. **Errichetti**. Tell me where it was.

Mr. **Wheeler**. I am not sure where it was. Do you remember on January 11, 1979, telling Mr. Weinberg about an attorney named Feinberg who was Senator Williams' bagman?

Mr. **Errichetti**. Did I say that to——

Mr. **Wheeler**. To Weinberg?

Mr. **Errichetti**. I am sure I did.

Mr. **Wheeler**. What was the context?

Why were you telling Mr. Weinberg that Mr. Feinberg was Senator Williams' bagman?

Mr. **Errichetti**. Well, if I remember correctly, it was one of the questions as to who was Alex Feinberg. And I guess—and not by fact—I am making the statement that he is a bagman. It was a rumor or a joke in our area, where we live, that Alex, for a second name or for a nickname, was the bagman for Pete. Whether that is fact or fiction, I don't know. I said it; yes. Whether it is true, that he is or isn't, that is another story.

Do you follow what I am saying?

Mr. **Wheeler**. Yes.

Did you make the same statement to Mr. McCloud?

Mr. **Errichetti**. If you say so; if the tape shows.

Mr. **Wheeler**. Do you recall the meeting of January 11, [53] 1979, attended by McCarthy, you, Feinberg, and Sandy Williams?

Mr. **Errichetti**. You are jumping from Atlantic City to Cherry Hill; OK?

Mr. **Wheeler**. January 11.

Mr. **Errichetti**. I am talking about—they came to Atlantic City. All right. When I had met that evening with Weinberg, et al——

Mr. **Wheeler**. That is the 8th.

Mr. **Errichetti**. The next day it was Margo Kennedy came in, Amoroso came in and McCloud——

Mr. **Wheeler**. That is the 9th.

Mr. ERRICHETTI [continuing]. And Bruce. They had dinner that evening. I made the mistake of putting McCloud and Margo in the same room and they either slept together or slept in separate beds. I don't know what they did behind closed doors. A room for Weinberg, a room for Amoroso and, as I said, I slept in Longport, which is down the road a piece. Now, there was conversations with myself and McCloud which I represented to them, that these were the things we could do.

Mr. WHEELER. That is the tape we have just been referring to, on January 9.

Mr. ERRICHETTI. Now, they leave Atlantic City. They, the whole body, they go to Cherry Hill, New Jersey, to the Hyatt House. All right. And I got rooms and I paid for—by American Express card. I got a room and I was told this [54] time specifically give a room to Margo by herself and give a room to McCloud by himself and everyone had individual rooms and I in turn sent up flowers to Margo and a bottle of whiskey to Margo [deleted] for a better word. I had—now, going back to previously—Alex Feinberg, I had called, at the instructions of Senator Williams, to meet with these gentlemen in regards to a loan that they were looking for.

Senator INOUYE. When did Mr. Feinberg's name first come into the conversation?

Mr. ERRICHETTI. On tapes?

Senator INOUYE. No. When did his name first come up?

Mr. ERRICHETTI. Alex Feinberg?

Senator INOUYE. Yes.

Mr. ERRICHETTI. I had—we had a meeting in the city of Camden in the city council chambers, of which there was both sides of the river, meaning Philadelphia and Camden, where we had this mass meeting of trying to get the Saratoga ship to be repaired in the Philadelphia navy yard and all the political leaders, labor leaders, business leaders, and whoever came to this mass meeting——

Senator INOUYE. When did the name first come up in the conversations with Weinberg; who brought it up? You didn't just say out of the blue sky, he is the bagman.

Mr. ERRICHETTI. No. You are right. What happened was [55] I had said to them, either by phone or whatever, that I had chatted with Senator Williams and his representative, Alex Feinberg and another gentleman, wished to meet then in regards to obtaining a loan and they would like to meet you in Cherry Hill, when we get to Cherry Hill.

Yes, sir, that was it. When we were in Cherry Hill, as I said earlier, the prime purpose of coming to Cherry Hill was to visit the port where they were going to finance Eden & Co. for this package refinery. I called at that time—I had called earlier, naturally, the executive director of the port, to come to the Hyatt House and to bring out blueprints and maps of the facility; and if there were any questions they had to ask in regards to engineering, he could answer, because Amoroso, among other things, posed as an engineer also.

Mr. WHEELER. Let me interrupt you for 1 minute. When you set up this meeting with the representative of the port for financing by Abdul Enterprises, there was Eden and Rosenberg. Did you think that this was at least legitimate; that this was going to happen;

that Abdul Enterprises was seriously considering this kind of financing?

Mr. ERRICHETTI. Yes. The answer is yes.

Mr. WHEELER. Go ahead.

Mr. ERRICHETTI. So, when they did come, they were met by the port person. They in turn went for a ride into Camden to see the facility and the land for the possibility of evaluation [56] for funding. When they came back, they said it was a beautiful sight. The usual—we will call you, don't call us speech—in regards to the next step, and then they had a meeting, also prearranged by me, for them to meet Alex Feinberg, and this Sandy Williams that I later found out—and I am sure in that context someone must have said, who is Alex Feinberg, and I said, he is the bagman for Senator Williams. I believe that is how it came out, to try to answer your question.

[57] Mr. WHEELER. Why did you make that statement?

Mr. ERRICHETTI. Everybody did.

Mr. WHEELER. Excuse me?

Mr. ERRICHETTI. Everybody did in that area.

Mr. WHEELER. Everybody made that statement about Feinberg?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Were you trying to impress McCarthy?

Mr. ERRICHETTI. I am sure I was.

Mr. WHEELER. Did you know Feinberg?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. How long had you known him?

Mr. ERRICHETTI. Alex; 20 years.

Mr. WHEELER. And did you know Senator Williams?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. How long?

Mr. ERRICHETTI. Did I know Senator Williams? I knew him as a political friend and supporter. I dare not call him Pete, which I never did. I called him Senator Williams. I respected him; an honorable person. Not socially involved. I knew him and he knew me as a representative back in his home State, who was a political person, a Mayor, a senator, and so forth. Did I know him intimately? No. The answer is no.

Senator INOUYE. In your 20 years of friendship with Mr. Feinberg, did you have any occasion to fill his bag?

[58] Mr. ERRICHETTI. No, sir.

Senator INOUYE. Or take from his bag?

Mr. ERRICHETTI. No, sir.

Senator INOUYE. Then what made you say he was the bagman?

Mr. ERRICHETTI. Senator, what made me say all these things that were on the tape? God only knows. I guess trying to impress somebody, and at the instruction of someone else.

Senator INOUYE. Were you instructed to say that he was a bagman?

Mr. ERRICHETTI. No, sir. I was going with the same flow of bragging and that I could move mountains, and at the instructions of Weinberg to say these things. And I just embellished it, and I am truly sorry for a lot of things.

Mr. WHEELER. Mr. Errichetti, I want to settle a couple of other questions.

There came a time on January 20, 1979, when you had a meeting with McCloud and you were passed an envelope containing $25,000. Is that not right?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Now, backing up, on January 17, 1979, toll records of Weinberg's telephone show that there were several discussions, telephone calls, between you and Weinberg on January 17. Do you recall that there were a number of telephone conversations between you and Weinberg preceding the [59] January 20 payoff?

Mr. ERRICHETTI. Sure.

Mr. WHEELER. What was the nature of those discussions?

Mr. ERRICHETTI. Instructions as to the upcoming meeting with McCloud and that I was going to get a phone call from McCloud to tell me that I was coming up—I was going to be picked up by them on Saturday morning by plane and brought to Veterans Boulevard. I was instructed by Mr. Weinberg not to be available, not to be picked up, because he had to meet privately with me first, and that we would go over the scenario as to how to finalize the appearance before McCloud with my speech and whatever.

Now, that is the essence of the conversations with Feinberg. I did get a phone call——

Mr. WHEELER. You mean with Weinberg?

Mr. ERRICHETTI. I did get a phone call from McCloud shortly thereafter, telling me he would like to see me, pick me up. I said I am sorry, I got to be in New York on some kind of bond meeting or whatever it was. So, therefore, I escaped from being picked up, and followed instructions of Weinberg by going to New York and registering at the Holiday Inn. I also was told not to use my name when I signed it, and I used Bill Eden's name.

Mr. NEAL. Told by whom?

Mr. ERRICHETTI. Told by Mr. Weinberg.

[60] Mr. WHEELER. You signed in under Bill Eden's name?

Mr. ERRICHETTI. I signed in under Bill Eden's name with a crazy license plate number, New York State plate number, and some Seventh Avenue address.

Mr. WHEELER. And that was on the 19th of January?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Back on the 17th, for a moment——

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. McCarthy and you talked on the telephone on the 17th after you had spoken with Weinberg several times. You did not mention to McCarthy in that conversation that was recorded that you had spoken with Weinberg earlier that day.

Mr. ERRICHETTI. I was instructed no way to tell him of our conversation and of our plan because he was supposed to be in Florida that Friday and not in the area. So, therefore, to their knowledge, quote, unquote, they thought he was in Florida while he was in New York meeting with me and having dinner and going over the scenario in my room thereafter on Friday evening.

Mr. NEAL. Let me make sure I understand that.

You know, we are having Mr. Weinberg tomorrow.

Mr. ERRICHETTI. I do not know that, sir.

Mr. NEAL. You are saying that Mr. Weinberg was assumed to be in Florida on the 19th?

Mr. ERRICHETTI. That is what he told me.

[61] Mr. NEAL. By this fellow McCloud when, in fact, he was in New York?

Mr. ERRICHETTI. On Long Island at the Holiday Inn with me for dinner and then in my room thereafter going over the scenario for the following morning when I was to meet with Mr. McCloud and receive $25,000.

Mr. NEAL. And you met with Mr. Weinberg on the night of the 19th unknown to the Government or to the Abdul people?

Mr. ERRICHETTI. According to Mr. Weinberg; yes.

Mr. NEAL. And he gave you the scenario of what to say the next day?

Mr. ERRICHETTI. First we had dinner, my nephew, he and I, and then thereafter we went upstairs to a room I had obtained, and he gave me the scenario; yes, sir.

Mr. NEAL. And he told you not to mention to anyone else that you had been talking to him?

Mr. ERRICHETTI. Absolutely.

Mr. NEAL. You said you registered that night under the name of Bill Eden.

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. Did he tell you to register under that name?

Mr. ERRICHETTI. No. He just said don't register under your name.

Mr. NEAL. Do not register under your name?

Mr. ERRICHETTI. Yes, sir. He did not say Bill Eden. I [62] picked the name Bill Eden.

Mr. WHEELER. Did he have a room?

Mr. ERRICHETTI. Who?

Mr. WHEELER. Weinberg at the hotel.

Mr. ERRICHETTI. No, sir.

Mr. WHEELER. He left that night to go back to his house?

Mr. ERRICHETTI. Yes, sir; I assume.

Mr. WHEELER. But your understanding was that the other Abdul Enterprises people thought he was in Florida?

Mr. ERRICHETTI. He told me, "They think I am in Florida and don't tell a soul that you are meeting with me or tell a soul that I am in New York."

Mr. WHEELER. And yet he went back to his house that night?

Mr. ERRICHETTI. I assume; yes. He had to because the next morning I met with him—I did not meet with him, I dropped off the envelope.

Mr. WHEELER. All right.

Yet met McCarthy on January 20?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And you did not tell McCarthy that you had met with Mr. Weinberg on the preceding day?

Mr. ERRICHETTI. That is correct.

Mr. WHEELER. What did McCarthy hand you?

Mr. ERRICHETTI. Eventually, an envelope, a manila packet.

[63] Mr. WHEELER. And what was in that packet?

Mr. ERRICHETTI. I was told $25,000. I never opened it.

Mr. WHEELER. You never opened the packet?

Mr. ERRICHETTI. No, Sir.

Mr. WHEELER. What did you do with it?

Mr. ERRICHETTI. Well, when I grabbed the package—again I assume the number was told to me was $25,000 by Weinberg and McCloud in fact had it there. Did I open it up and look into it? No.

When I left the office——

Mr. WHEELER. Where did you have the packet when you left the office?

Mr. ERRICHETTI. In my hand. I handed it to my nephew who was out in the outer office. I said so long to Mr. McCloud. We got in my car. I said, Joseph, drive to the Holiday Inn.

Now, the envelope was between my nephew and I, and I was holding it, meaning the envelope. We got to the Holiday Inn. I said, Joseph, take this envelope and put it in the room that I was in, drop it off. In fact, put it under the mattress, and what do they call it, the spring, slip it under there and come back.

Mr. NEAL. What time of day was this?

Mr. ERRICHETTI. Eleven, twelve, one.

Mr. NEAL. And you went back to the Holiday Inn where you [64] stayed the night before?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. You did not open the envelope?

Mr. ERRICHETTI. No, sir.

Mr. NEAL. You had been told it was $25,000?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. You took the envelope, you and your nephew?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. You drove back to the Holiday Inn?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. You gave it to your nephew?

Mr. ERRICHETTI. Yes.

Mr. NEAL. And told him to take it to the room where you had been staying and put it under the mattress?

Mr. ERRICHETTI. Yes.

Mr. NEAL. Is that the last you ever saw of the envelope?

Mr. ERRICHETTI. And the conversation.

Mr. NEAL. Well, you surely had some conversation with somebody or somebody would find an envelope containing what you assumed to be $25,000.

Mr. ERRICHETTI. You have to go back a little in regards to devising plans and methods as to the whimsical attitudes of the sheiks and the Arabs, one of which would only be there temporary and/or at their whim. The concoction was very simply that we were to go in business and that it would be [65] Amoroso, DeVito for a better word, Mr. Weinberg, and myself, that when I left office we would form a company, a corportion, and the money that I was getting was to be put in escrow account and that was to be utilized for our impending business, corporation, partnership, call it what you like, in regards to consulting work in the Atlantic City area. That was the scenario set up and I had no problem with that.

Mr. WHEELER. Mr. Errichetti, who made the reservations at the Holiday Inn for you? Did Danny Anise make them or Mel Weinberg?

Mr. ERRICHETTI. She made them through Tony Tracotia who was the manager of the Holiday Inn.

Mr. FURST. You mean in Long Island?

Mr. **Errichetti**. There was reservations made. I walked up and said I would like to have a room for this evening. They had rooms. I think it was on a Saturday—Friday night rather.

Mr. **Wheeler**. And your room was a single?

Mr. **Errichetti**. Two beds.

Mr. **Wheeler**. For you and——

Mr. **Errichetti**. Joseph.

Mr. **Wheeler**. Mr. DiLorenzo and you stayed in the same room?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. And did you tell him which bed to put the [66] envelope under?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Had you checked out of that room yet?

Mr. **Errichetti**. No.

Mr. **Wheeler**. When did you check out?

Mr. **Errichetti**. I never checked it out. He did.

Mr. **Wheeler**. Joseph DiLorenzo?

Mr. **Errichetti**. No. Mr. Weinberg checked it out.

Mr. **Wheeler**. How did he get into the room or how did he get a key?

Mr. **Errichetti**. I gave it to him.

Mr. **Wheeler**. When did you give it to him?

Mr. **Errichetti**. The night before.

Mr. **Wheeler**. Did you have two keys or did you give him the one you had and——

Mr. **Errichetti**. I believe there was two keys and I gave him one.

Mr. **Neal**. Did you tell him that the envelope was going to be there?

Mr. **Errichetti**. He told me.

Mr. **Neal**. He told you to put it there? Did he tell you to put it under the mattress?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. And that is what you did through Joseph DiLorenzo?

[67] Mr. **Errichetti**. Right to the T.

Mr. **Neal**. The entire envelope?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. You did not take any?

Mr. **Errichetti**. No.

Mr. **Neal**. What was your business arrangement with Mr. Weinberg? You were going to share?

Mr. **Errichetti**. Right. This money was to be put in escrow for a business venture which we were going to go into at the end of my term of office, 1½, 2 years away, and I had no problem with that.

Mr. **Neal**. No problem leaving that money to a man like Weinberg?

Mr. **Errichetti**. At that time, I was thoroughly programmed and believed what he said.

Mr. **Wheeler**. Mr. Errichetti, when Weinberg proposed to you the night of the 19th that you leave the envelope with $25,000 under the mattress, did you say to him what happens if the bed is not made and the maid comes in and finds it?

Mr. **Errichetti**. I did not question it.

Mr. **Wheeler**. Did Joseph DiLorenzo, when you gave him the envelope, say anything like that to you?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you ask him if the bed was made?

Mr. **Errichetti**. No. Just told him what to do and he [68] did it and we came back to Camden.

Mr. **Wheeler**. Did you prepay for that room?

Mr. **Errichetti**. I paid cash.

Mr. **Wheeler**. For 2 nights or for 1?

[69] Mr. **Errichetti**. Two nights—no, 1 night. So it had to be before 12 o'clock, or closing time. I think the meeting was for 10 or 10:30, and I was back a half hour later or so. I am sure it was very close to closing time. I am only assuming what I did. I do not know what he did. He may have paid for 2 nights.

Senator **Rudman** [presiding]. Mr. Errichetti, are you telling us here this morning that you were this casual about the handling of $25,000 in cash that was going to be used as an investment in a future business arrangement with you?

Mr. **Errichetti**. Yes.

Senator **Rudman**. You are telling me, when he told you to put it under the mattress, you did not say is that safe? That did not cross your mind at all?

Mr. **Errichetti**. No.

Senator **Rudman**. Had you been accustomed to handling large sums of cash heretofore?

Mr. **Errichetti**. Only campaign funds that were legal and lawful for me to pass out. One had nothing to do with the other.

Senator **Rudman**. So there was nothing unusual about stuffing $25,000 under the mattress, and hoping that Weinberg would find it to be there?

Mr. **Errichetti**. If Weinberg proposed it, I am sure it was all scrutinized on the other end.

[70] Mr. **Neal**. Was Weinberg with you at the meeting?

Mr. **Errichetti**. Which one?

Mr. **Neal**. The meeting where you got the cash.

Mr. **Errichetti**. No, just McCloud and I.

Mr. **Neal**. Did you see him after the meeting?

Mr. **Errichetti**. No.

Mr. **Neal**. You do not know where Weinberg was all the time?

Mr. **Errichetti**. No.

Mr. **Neal**. He could have been waiting in the room?

Mr. **Errichetti**. No, because——

Mr. **Neal**. In the bathroom.

Mr. **Errichetti**. My nephew did not say he saw him. He did not hand it to him. He put it like I told him to do. That is what he did. If he was in the bathroom, or in a lobby outside, I do not know.

Mr. **Wheeler**. When was the next time you spoke to Mr. Weinberg? When I say next time, after your nephew came back down and said I left the envelope there, when was the next time you spoke to Weinberg?

Mr. **Errichetti**. Whenever it was. He said beautiful, fine, everything was great.

Mr. **Wheeler**. That day?

Mr. **Errichetti**. I do not believe so.

Mr. **Wheeler**. Did he expressly acknowledge that he got the [71] $25,000?

Mr. ERRICHETTI. He did not mention the numbers. He said I got the envelope. It was fine, everything went smoothly, McCloud is happy as a jaybird, and whatever, that kind of connotation, and whatever.

Mr. WHEELER. On January 25, 1979, 5 days later, Mr. Errichetti, did you have several telephone conversations with Mr. Weinberg?

Mr. ERRICHETTI. I might have.

Mr. WHEELER. On January 25, 1979, did you fly down that evening to Florida?

Mr. ERRICHETTI. I went down there. Whether it was the 25th or 24th—yes, I was in Florida. What dates, I cannot remember.

Mr. WHEELER. Did you tell Mr. Weinberg beforehand that you were going to go to Florida?

Mr. ERRICHETTI. It was Mel's request for me to come down and spend a couple of days with him, and show me around, and show his hospitality, in return for the hospitality I offered in Cherry Hill and Atlantic City the previous couple or 3 weeks before that.

Mr. NEAL. And the envelope?

Mr. ERRICHETTI. Sir?

Mr. NEAL. And the hospitality you offered in the hotel room?

[72] Mr. ERRICHETTI. That was not mentioned. That was just—it was just the hospitality, and I went down.

Mr. WHEELER. How much before January 25 did you and Mr. Weinberg arrange for this trip by you down to Florida?

Mr. ERRICHETTI. I do not know the time frame.

Mr. WHEELER. Was it a last minute thing, or did you arrange it on the 20th, or——

Mr. ERRICHETTI. I am sure it was something that I had to fit into my schedule, to move up, or adjust my schedule. So I am sure it had to be a week or so before then.

Mr. WHEELER. Do you recall approximately what time on the 25th you went down to Florida? Was it late at night? Was it during the day?

Mr. ERRICHETTI. I think it was late at night, only because there was a delay in planes. I think I got down late, I think. I planned to go like 4, and I think we got there 9, 10, something like that, late, dark, I think.

Mr. WHEELER. Would you have any records, or access to any records that would reflect what flight you took down to Florida on that date?

Mr. ERRICHETTI. I may. I would be happy to look. I do not have them here.

Mr. WHEELER. Does it refresh your recollection if I suggest to you that you might have arrived at 3 o'clock in the morning on the 26th?

[73] Mr. ERRICHETTI. Does not sound right.

Mr. WHEELER. That is too late?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Did you call Weinberg as soon as you arrrived in Florida on the 25th?

Mr. ERRICHETTI. I may have.

Mr. WHEELER. Did you stay at the Sheraton in West Palm Beach?

Mr. ERRICHETTI. I stayed at a hotel, whether it was the Sheraton—it was real close to a big shopping center, like to our left, I could look out the window and see this huge shopping center in West Palm Beach. If it was the Sheraton, I would not know. Could be.

Mr. WHEELER. Did you have dinner with Weinberg that night?

Mr. ERRICHETTI. May have.

Mr. FURST. Are you referring to the night he arrived?

Mr. WHEELER. The night you arrived.

Mr. ERRICHETTI. I do not recall, sir.

Mr. WHEELER. Do you recall calling Weinberg at 3 o'clock in the morning at—that is, the morning after the night you arrived?

Mr. ERRICHETTI. I do not believe I ever called Weinberg at 3 o'clock in the morning, ever.

Mr. WHEELER. When Weinberg discussed with you, or arranged this trip of yours, did he ask you to take down to Florida [74] with you a sample, or a blank of a certificate of deposit on any bank?

Mr. ERRICHETTI. A what, sir?

Mr. WHEELER. A certificate of deposit on any bank.

Mr. ERRICHETTI. Where would I get that? You mean a bank——

Mr. WHEELER. A certificate of deposit.

Mr. ERRICHETTI. I do not think so.

Mr. FURST. I did not hear the question.

Mr. WHEELER. In arranging for your trip on January 25, 1979, in your discussions with Mr. Weinberg, did he, at any time, ask you to take down to Florida with you, on the 25th, a blank certificate of deposit, or a sample certificate of deposit?

Mr. ERRICHETTI. I have no recollection of that, sir.

Mr. WHEELER. Did you in fact take a blank certificate of deposit down to Florida with you?

Mr. ERRICHETTI. I do not believe so. I think I would know that. I do not believe I did. You may be confusing that with something later on.

Mr. WHEELER. I am talking specifically about January 25 right now.

Mr. ERRICHETTI. Does not ring a bell. Me carrying something in my pocket, or——

Mr. WHEELER. Or a briefcase, or whatever?

Mr. ERRICHETTI. I do not think so. I am not even aware [75] of that.

Mr. WHEELER. At any time, on or about January 25 or 26, did you give Mel Weinberg a sample, or a blank certificate of deposit?

Mr. ERRICHETTI. Honestly, I do not—I do not remember anything like that.

Mr. WHEELER. How about a letter of credit?

Mr. ERRICHETTI. That does not even ring a bell, either.

Mr. WHEELER. Did you ever meet—on that trip to Florida—did you meet an individual whose first name was Gunnar?

Mr. ERRICHETTI. That day?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. No.

Mr. WHEELER. Or any time during that trip; during that particular trip?

Mr. **Errichetti**. He mentioned the name Gunnar. I think it was in March—I think he was on a boat. That name rang a bell.

Mr. **Wheeler**. He was there in March?

Mr. **Errichetti**. He mentioned Gunnar being head of the Miami office. I do not think I ever met him. Maybe I did, but I do not think so. I know—supposedly, I met his mother. I do not know if it was his mother, true or false. He introduced me as his mother.

Mr. **Wheeler**. Mr. Weinberg stated that, on January 25, 1979, in the telephone conversation with you, you offered to [76] share with him the $25,000 you had been paid on January 20, 1979.

Mr. **Errichetti**. Repeat that, please.

Mr. **Wheeler**. Mr. Weinberg has stated that, on January 25, 1979, in a telephone conversation with you, you offered to share with him the $25,000 that you had been paid by Mr. McCarthy on January 20, 1979.

Is it your testimony that that is a false statement?

Mr. **Errichetti**. How could I call him on the phone and say I am going to share something with you that I do not have?

Mr. **Wheeler**. I am asking if that is a false statement.

Mr. **Errichetti**. The answer is——

Senator **Rudman**. Counsel asked you a very simple question.

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Mr. Weinberg has also stated that, at 3 o'clock in the morning on January 26, he received a call from you, in which you stated you were in Florida, and that you needed to meet him right away on an emergency basis, that he met you at 7 o'clock at the Sheraton in West Palm Beach, and that you gave him a sample certificate of deposit, which he approved for you to use in making such forged certificates of deposit.

Is it your testimony that that is a false statement by Mr. Weinberg?

Mr. **Errichetti**. Yes.

[77] Mr. **Wheeler**. Do you recall discussing phony certificates of deposit with Mr. McCarthy prior to January 25, 1979?

Mr. **Errichetti**. Maybe; I do not know.

Mr. **Wheeler**. And representing to Mr. McCarthy that you could in fact obtain phony CD's?

Mr. **Errichetti**. I may have.

Mr. **Wheeler**. Had you ever, in fact, obtained phony CD's, or handled phony CD's, to your knowledge?

Mr. **Errichetti**. The only CD's I ever got were handed to me by Mr. Weinberg.

Mr. **Wheeler**. I am talking about before you talked with Mr. Weinberg.

Mr. **Errichetti**. No.

Mr. **Wheeler**. You have never dealt with phony CD's?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Phony letters of credit?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. When you said to Mr. McCarthy that you could obtain phony CD's——

Mr. **Errichetti**. That is right. Part of the scenario was that I was able to produce anything in the world, including anything you were saying.

Mr. **Wheeler**. Did Mr. Weinberg tell you to make some statements about phony CD's?

Mr. **Errichetti**. Yes.

[78] Mr. **Wheeler**. When did he make such statements to you?

Mr. **Errichetti**. Prior to the 6th, 8th phone conversation.

Mr. **Wheeler**. What did he tell you the purpose of that was?

Mr. **Errichetti**. The purpose of those CD's was that there was at that time a freeze by the Iranian Government on the moneys that were in the banks of Abdul Industries in Iran, and they had to get the money out in some way. This was a way they could bypass, or do a business transaction, or a bank transaction, which I am not familiar with, which I do not understand. That is the speech I got.

Mr. **Wheeler**. Did Mr. Weinberg ever tell you that he had told the other people at Abdul that you had, on January 25, 1979, given him a sample of a phony CD?

Mr. **Errichetti**. That is the first time I am hearing it, but I do not know.

Mr. **Wheeler**. In late January 1979, did you see a picture of a woman who had been introduced as Margo Kennedy in a newspaper?

Mr. **Errichetti**. No.

Mr. **Wheeler**. You did not?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. Did anybody ever tell you that her picture had been in the newspaper?

Mr. **Errichetti**. Margo Kennedy?

[79] Mr. **Wheeler**. Margo Kennedy.

Mr. **Errichetti**. No.

Mr. **Wheeler**. Nobody ever told you that?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you ever talk to Mel Weinberg about the possibility that Margo Kennedy might be an FBI agent?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you ever talk to anybody about that possibility?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you ever talk to anybody, at any time in 1979, about the possibility that anyone connected with Abdul Enterprises might be an FBI agent?

[80] Mr. **Errichetti**. Yes.

Mr. **Wheeler**. When did that occur—when did it first occur?

Mr. **Errichetti**. July.

Mr. **Wheeler**. Who did you talk to?

Mr. **Errichetti**. A person by the name of Stan Myatt.

Mr. **Wheeler**. How do you spell that last name?

Mr. **Errichetti**. M-y-a-t-t.

He came to my home in Longport and he said, look, I don't know what is going on, he said, but I think there is something wrong, and I believe you got to be careful. I said, about what? He said, well—and he was very cautious with his words, and I had a very difficult time trying to understand what he was trying to tell me except he left the inference or innuendo and he used the word "cells"——

Mr. **Neal**. What?

Mr. **Errichetti**. Cells, like communist cells, different cells, various cells, one doesn't know what the other one is doing and you may be caught up in one of these cells. He didn't use the word FBI. He made the inference that there might be some quote unquote, a problem for me. OK. Needless to say, he would not go any further in regards to what he knew or did not know, but he left me with the—I guess a dangling participle where I was confused, so confused that I called Mel in Florida and I had to see him on this matter that [81] this fellow came to me on, and I drove up to, I guess it was, Kennedy Airport or the other one, I am not sure which airport, but one of the airports, in a haste and in total anxiety, to question him about this Stan Myatt conversation with me, and when he got off the airport, he had with him his son. OK. And we got in the car and he drove because I did not know the terrain and his son is in the back and he sat in the driver's seat and I sat in the passenger's seat and I burst out with this, I guess, rumor or conversation that I had with this gentleman and I made the mistake of saying Stan Myatt, which I should never have done. In any event, I did, and told him about the cells and there might be FBI, maybe undercover agents. I said those things, and he disscounted them with his usual finnesse and said absolutely no truth to it, he said. That is something—it is something in Cleveland with some CD's and McCloud had his hand in it and they held him for 3 hours. It was all baloney. It wasn't us, the FBI, it was the guys we were doing business with it North Carolina, and he went on and rambled on and I believed him.

Senator **Rudman**. Mr. Errichetti, tell us about Mr. Myatt; who is he?

Mr. **Errichetti**. I met Mr. Myatt at Anthony Torcasio's Holiday Inn, at Atlantic City, and—a nice person, appeared to be, anyway. He was with a fellow from Florida, a little [82] short Jewish man, I don't know his name, and they were in the business of loaning money, also, and they were in the purpose of trying to loan money to Torcasio in regards to his Penthouse operation and I met him in that capacity a few times and he took a shine to me. Maybe he felt sorry for me. Maybe he wanted to keep me out of trouble. But he was honorable, as I sit here to tell you. He did tell me something that was true and when I confronted Mr. Weinberg, he was able to finagle, con, manipulate.

Senator **Rudman**. How long had you know Mr. Myatt?

Mr. **Errichetti**. A couple, 3 months before that.

Senator **Rudman**. How often had you seen him; on how many occasions?

Mr. **Errichetti**. Four or five times.

Senator **Rudman**. And what did you talk about with Mr. Myatt when you were with him?

Mr. **Errichetti**. No serious chat, just idle chatter, nothing to remember, to be honest with you.

Senator **Rudman**. Did you discuss with him the fact that you were involved in an operation to, in your mind at that time, your state of mind, to defraud some Arab money interest?

Mr. **Errichetti**. No. He wasn't aware of that—I don't think anybody was aware of that.

Senator **Rudman**. Did you discuss any aspect of that with him?

[83] Mr. ERRICHETTI. I think Tony brought it up because——

Senator RUDMAN. Who?

Mr. ERRICHETTI. Tony Torcasio, who was looking for some funding also and he talked to Mel Weinberg at all in regard to the funding for the Penthouse. So he may have talked to Myatt, but he was also working with Abdul Industries trying to obtain a loan through Errichetti. That is why we compared notes.

Senator RUDMAN. Is that why Myatt, why he came to you? He came out of the blue to you and said, Angelo, you better be careful?

Mr. ERRICHETTI. Yes.

Senator RUDMAN. He didn't tell you what to be careful about?

Mr. ERRICHETTI. I said he talked in parables, for better word, which I couldn't understand, but I got the inference that there was an undercover scam—not scam, operation.

Senator RUDMAN. You got the impression that he knew something that he wanted to warn you and yet protect himself? That was the feeling you got from that conversation?

Mr. ERRICHETTI. Absolutely.

Senator RUDMAN. And yet you had never on any occasion indicated to him that you were involved with——

Mr. ERRICHETTI. Abdul Industries.

Senator RUDMAN. You had not——

Mr. ERRICHETTI. Through Tony Torcasio talking to him, [84] yes, we were involved and trying to get a loan.

Senator RUDMAN. So you did discuss Abdul Industries with him, because Tony Torcasio had raised it?

Mr. ERRICHETTI. Nothing serious, no serious indepth talk about Abdul, just the name, and my, I guess, being a bird dog, trying to get loans for them.

Senator RUDMAN. When did this conversation with Mr. Myatt take place?

Mr. ERRICHETTI. Late June, early July.

Senator RUDMAN. And, of course, subsequently you learned what he had told you on that day was correct,

Mr. ERRICHETTI. Yes, sir.

Senator RUDMAN. In learning that it was correct, in retrospect, listening, recalling that conversation, is it your belief that he knew quite a bit more than he told you that day?

Mr. ERRICHETTI. Yes, sir.

Senator RUDMAN. That he knew it was an undercover operation?

Mr. ERRICHETTI. In hindsight, yes.

Senator RUDMAN. Where is he from?

Mr. FURST. May I add something? We attempted to find Mr. Myatt. We were unsuccessful.

Mr. ERRICHETTI. I combed the earth for him but I couldn't find him.

[85] Senator RUDMAN. Let me get on the record a couple of things.

Was he in Atlantic City with his associates because he was proposing to loan money to the Penthouse?

Mr. ERRICHETTI. He claimed they had eurodollars, whatever that is.

Senator RUDMAN. Do you know where he was staying in Atlantic City?

Mr. ERRICHETTI. No, sir.

Senator RUDMAN. You have no idea?

Mr. ERRICHETTI. He may have been staying at the Holiday Inn in Atlantic City. He may have been a guest of Anthony Torcasio.

Senator RUDMAN. Do you know approximately what date that would be?

Mr. ERRICHETTI. When he was there?

Senator RUDMAN. Yes.

Mr. ERRICHETTI. June.

Senator RUDMAN. You met with him four or five times; is that correct?

Mr. ERRICHETTI. Not one of—not being planned, where I was visiting Tony and he would be there or something.

Senator RUDMAN. Did he come and go in terms of Atlantic City, or was this all within one short period of time?

Mr. ERRICHETTI. I guess it was within a couple of months [86] period.

Senator RUDMAN. So, he was coming to Atlantic City and leaving or——

Mr. ERRICHETTI. Or staying there, somewhere.

Senator RUDMAN. Did you attempt to locate him through that Holiday Inn, through that Penthouse?

Mr. ERRICHETTI. After it exploded?

Senator RUDMAN. Yes.

Mr. ERRICHETTI. Yes. I even called his number that he gave me in Florida. I combed the earth for him, sir.

Senator RUDMAN. I would suggest that, rather than explore this any further now, I would ask counsel at the conclusion of the hearing to find out from Mr. Errichetti and his counsel all the details because that would be significant, I would think, for reasons which I think are self-evident.

Mr. ERRICHETTI. Sir, can I continue on that gentleman, if you like? OK.

After I was told by Mr. Weinberg and his son listening in the back, that that was baloney and not true and I guess he convinced a person that wanted to believe, sir—we wound up at a Chinese restaurant near the Long Island Expressway and we were there for a couple of minutes and this Lincoln Continental pulled up and a woman got out of the car, black hair and whatever, and was introduced to me as his sister-in-law.

Senator RUDMAN. Whose sister-in-law?

[87] Mr. ERRICHETTI. Weinberg's sister-in-law, Marie, his sister-in-law, Marie, and we had a coke and I left. OK. In the month of December, in-between, I believe, Christmas and New Year's, I believe, whatever it was, I was in the casino——

Senator RUDMAN. 1979?

Mr. ERRICHETTI. Yes. Later—now we are going 6 months in advance, ahead. I was in a casino and I was walking around. It was on a Sunday afternoon and I bumped into this huge frame and this gentleman was Stan Myatt and his words to me, in a sad, pathetic expression, he said, "Man, you did a number on me." OK. Now my inference to deny it——

Mr. NEAL. Excuse me.

"Man, you did a number on me?"

Senator RUDMAN. Meaning, of course, that by using his name to Mel Weinberg, that somehow came back to him?

Mr. ERRICHETTI. My interpretation of his expression and his sadness in his voice—I let him down by divulging his name where he was trying to do something for me, and his inference was he either got beat to hell or whatever. That is exactly what the interpretation or connotation I got from him to me and I apologized with all of my heart to him and he walked away and I walked away.

Senator RUDMAN. Mr. Errichetti, there is one thing I lost in the story. You started talking about a Lincoln [88] Continental and a woman that was introduced to you as Mel Weinberg's sister-in-law.

What connection does that have?

Mr. ERRICHETTI. No connection. I was continuing to finish the story, meaning that the trip I was questioning him about—we drove—that was his real wife, by the way, not his sister-in-law.

In any event, I left convinced that he was not, and that they were not, and that they were legitimate and that everything was fine, when in fact it was not.

Senator RUDMAN. Did you ever see Mr. Myatt after that occasion?

Mr. ERRICHETTI. No, sir.

Senator RUDMAN. You described him as very large?

Mr. ERRICHETTI. Yes, bulky.

Senator RUDMAN. How old?

Mr. ERRICHETTI. Fortyish, 38, 39, 41, 42 by now.

Senator RUDMAN. There is no question in your mind from that conversation that your disclosure of his name to the FBI informant, Mr. Weinberg, came right back on Mr. Myatt?

Mr. ERRICHETTI. Absolutely.

Senator RUDMAN. We got to find out who Mr. Myatt is.

Mr. WHEELER. Mr. Errichetti, that evening when you were introduced to a woman named Marie and were introduced as Weinberg's sister-in-law——

[89] Mr. ERRICHETTI. That is right.

Mr. WHEELER. Describe her again.

Mr. ERRICHETTI. She had black hair, black, kind of cute, five foot two, three.

Mr. WHEELER. How old?

Mr. ERRICHETTI. Late forties.

Mr. WHEELER. Did you ever see her again after that?

Mr. ERRICHETTI. Only on the TV screen.

Mr. WHEELER. So you only saw her once in her life?

[90] Mr. ERRICHETTI. Yes.

Mr. WHEELER. And she had black hair?

Mr. ERRICHETTI. Then, yes.

Mr. WHEELER. You have mentioned a name, Tony Tracotia.

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Do you have any knowledge or any information that leads you to believe—or that ever led you to believe that Tony Tracotia was connected to organized crime?

Mr. ERRICHETTI. No.

Mr. WHEELER. Do you know Alvin Melnick?

Mr. ERRICHETTI. Met him once.

Mr. WHEELER. Do you have any information that leads you to believe that he is connected to organized crime?

Mr. ERRICHETTI. Only by news accounts.

Mr. WHEELER. Have you ever met Meyer Lansky?

Mr. ERRICHETTI. No.

Mr. WHEELER. Have you ever met Morris Schenker?

Mr. ERRICHETTI. No, sir.

Mr. WHEELER. Those names mean anything to you?

Mr. FURST. In what sense?

Mr. WHEELER. Had you ever heard them before I just mentioned them?

Mr. ERRICHETTI. Sure. Newspaper accounts.

Mr. WHEELER. Mr. Errichetti, you said that you stopped being mayor of Camden in, what was it, 1981, June of 1981?

[91] Mr. ERRICHETTI. I did not seek reelection, for obvious reasons.

Mr. WHEELER. Have you been employed since then?

Mr. ERRICHETTI. Trying to scuffle. Very difficult trying to make a living.

Mr. WHEELER. Have you been employed since then?

Mr. ERRICHETTI. Self-employed.

Mr. WHEELER. What is the nature of your business?

Mr. ERRICHETTI. Trying to sell cardboard, selling cardboard to mills, aluminum waste, selling waste products.

Mr. WHEELER. Have you been engaged in that business ever since June of 1981?

Mr. ERRICHETTI. Yes, basically, with not much success.

Mr. WHEELER. Do you have any partners?

Mr. ERRICHETTI. My brother is in the corporation with me and my wife is in another corporation which is very defunct basically.

Mr. WHEELER. It is a corporation?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Do you hold an office in the corporation?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. What is your position?

Mr. ERRICHETTI. President in both of them.

Mr. WHEELER. Who provided the financing for the corporation?

[92] Mr. ERRICHETTI. Well, on one financing I borrowed $10,000 against my home, and I used that and that is now depleted basically. The other corporation was where I had a land lease and the funds whereby—I leased a piece of property and subleased. The gentleman that subleased, I used those moneys in the account which is also presently defunct.

Mr. WHEELER. Have you ever received any funds from anyone who you believed at the time to be a member of organized crime?

Mr. ERRICHETTI. To my knowledge, never.

Mr. WHEELER. Either directly or indirectly.

Has anyone ever paid legal fees, for example, that person being a member of organized crime?

Mr. ERRICHETTI. Not to my knowledge.

Mr. WHEELER. Now, you said, or you suggested actually a few minutes ago that there did come a time when you had some transaction with Mel Weinberg that involved phony certificates of deposit.

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. How did that come about?

Mr. **Errichetti**. I was meeting with him on—whatever the subject was, and I do not really know, but I am sure it was clandestine, in regards to the sheiks. He said to me you got to do me a favor. Absolutely got to do me a favor because we have a time frame problem. He handed me a stack of CD's and [93] said please, my secretary is not available. She cannot type them up. Would you please type them up and have it done? I said sure. With the specific instructions, please make sure you wipe them off, make sure they are clean and give them back to me, and it was done.

Mr. **Wheeler**. These were blank CD's?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. Do you remember when this occurred?

Mr. **Errichetti**. No, not really.

Mr. **Wheeler**. Was it after the payoff of $25,000 on January 20, 1979?

Mr. **Errichetti**. I would assume yes.

Mr. **Wheeler**. It was after that?

Mr. **Errichetti**. Everything was after that.

Mr. **Wheeler**. And he gave you the blank CD's?

Mr. **Errichetti**. Yes, sir, with the specific instructions please have them done as quickly as possible because of the time frame in Iran, because things were getting worse, and the secretary that he had, or they had, was not available, and would I please have it done.

Mr. **Wheeler**. And what was your understanding as to why he needed these? You said things were getting difficult in Iran. What was your understanding of the connection?

Mr. **Errichetti**. They were replacing this with the actual dollars that were being frozen, and they were using this as a [94] substitute. That may sound strange, but that is exactly what he told me.

Yes, that is basically what they said, replacing the CD's for an asset and taking out the real, I guess, and supplanting it with the fakes.

Mr. **Wheeler**. How many CD's were there? You said a stack.

Mr. **Errichetti**. $485 million worth.

Mr. **Wheeler**. In what denomination?

Mr. **Errichetti**. $485 million. I am not sure. Do not hold me to the numbers. All I know, the bottom was $485 million.

Mr. **Wheeler**. Did he offer a commission for doing this?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did he suggest to you that he would get any commission for doing this?

Mr. **Errichetti**. Not to my knowledge.

Mr. **Wheeler**. Is that the only occasion on which any certificates of deposit or letters of credit changed hands between you and Mel Weinberg?

Mr. **Errichetti**. That is the only one I can remember, sir. Honestly answered.

Mr. **Wheeler**. Now, on February 12, 1979, Mr. Errichetti, there was a recorded conversation, I have the transcript here and you are welcome to look at it. The conversation took [95] place at the offices of Abdul Enterprises. Participating were Mayor Angelo Errichetti, Mel Weinberg, Anthony Amoroso, and Jack McCarthy posing as Jack McCloud.

In the course of that conversation, Mr. Errichetti, the following dialog occurs:

ERRICHETTI. Well, I think by March 1st I want to check it out.

AMOROSO. Did he say how good this stuff is? I mean, you know, what kind of quality?

ERRICHETTI. Excellent.

AMOROSO. What kind of paper do they use?

ERRICHETTI. Good.

AMOROSO. That is probably the biggest problem, the paper on that stuff.

ERRICHETTI. He told me it was guaranteed to show how good it is.

AMOROSO. Okay. That would be ideal.

Was that a conversation about CD's?

Mr. ERRICHETTI. No. I think it was CD's or counterfeit money.

Mr. WHEELER. Did you give counterfeit money to Mel Weinberg?

Mr. ERRICHETTI. No, no. Again the scenarios that we were having, it was always one of, look, if you get in there, tell him you can get counterfeit money. OK. Following [96] instructions, true to form, when I got there, and Mel would be sitting there also—it was not a question of him not being present. It was a question of that particular meeting being taped and me taking my speech, yes, good quality—no knowledge, never got involved in counterfeiting, never knew anybody that made——

Mr. WHEELER. Let me see if this helps you. The next two lines in this transcript are:

WEINBERG. [Inaudible] conversation about banking in the Middle East.

AMOROSO. As long as you got something to exchange for it, they are not going to check.

Now, that fits the scenario where they are going to use the phony CD's to get cash out of the Middle East.

Mr. ERRICHETTI. Could be.

Mr. WHEELER. So this suggests that this conversation is about the CD's.

Mr. ERRICHETTI. It could be.

Mr. WHEELER. Amoroso is asking you about the quality of the paper.

If Amoroso was supposed to be involved in this, how come Amoroso did not know about the quality of the paper?

Mr. ERRICHETTI. Maybe—for the purpose of knowing that he was on tape. They were always playing their roles of not knowing anything. They were playing their roles as the white hats and me as a black hat.

[97] Mr. WHEELER. I am looking at it from your point of view. At the time, you told us that Amoroso was in on all these dealings with Weinberg. You got all the blanks from Weinberg so that in your frame of mind you should have known that Amoroso also would have known about this transaction, and yet here he is asking you about the paper, what kind of paper they have.

Mr. ERRICHETTI. The only answer I have is what I said earlier.

Mr. WHEELER. Which is what?

Mr. ERRICHETTI. They knew they were on tape.

Mr. WHEELER. You did not know that. Why did you not say, "What are you talking about, Tony? Mel gave me all these things to fill out."

Mr. ERRICHETTI. I agree with you, Malcolm, hindsight is 20-20.

Mr. WHEELER. McCloud is not there either. McCloud was not there in that conversation.

Mr. ERRICHETTI. In February?

Mr. WHEELER. February 12.

Mr. ERRICHETTI. We were—he was still a boss.

Mr. WHEELER. But he was not at this meeting.

Mr. ERRICHETTI. Whatever you say.

Mr. WHEELER. He came in later on, as a matter of fact. The transcript shows that.

[98] Who typed up the phony CD's, Mr. Errichetti?

Mr. ERRICHETTI. I had them done, sir.

Mr. WHEELER. By whom?

Mr. ERRICHETTI. My secretary.

Mr. WHEELER. Dani Anise?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Did you tell her what was going on? Did she know what she was doing?

Mr. ERRICHETTI. No, sir.

Mr. WHEELER. These documents say certificate of deposit right across the top, do they not?

Mr. ERRICHETTI. Well, to a secretary who was loyal to me, never asked any questions.

Mr. WHEELER. How long did it take Dani Anise to type up these certificates?

Mr. ERRICHETTI. Half an hour, I do not know.

Mr. WHEELER. Did you give them back to Weinberg the same day you got them from him?

Mr. ERRICHETTI. The same day or the next day, within a very short time thereafter.

Mr. WHEELER. Would it refresh your recollection if I told you that the transcript of March 8, 1979, which is approximately a month later, indicates that that is the date you gave the certificates to McCarthy?

Mr. ERRICHETTI. Malcolm, whatever you say. Again I [99] cannot be held to a time frame because I really do not remember. Not looking at tapes or transcripts for three years—so whatever you are reading to me, if you say that is March 8th, fine, that is what it says.

Mr. WHEELER. That is what it does say. So we have a period of nearly a month in between and you just said it took Dani a half hour, and Weinberg had told you how urgent this was.

Mr. ERRICHETTI. Yes.

Mr. WHEELER. And yet you took a month to get them back to him.

Mr. ERRICHETTI. I only did what I was instructed to do, namely if he wanted them, I would have gotten them to him. He gave them to me. He needed them. He is the one that set the time frame, not I. I had no compunction as to when to deliver them except when to deliver them by instruction. If it was March 11——

Mr. WHEELER. Did 20 some days strike you as being urgent matter of time?

Mr. ERRICHETTI. I do not know when they were going overseas. I do not know what they consider urgent in regard to less than a month, less than a day. I am only carrying out instructions. I do not know what their time frame is, as far as they are concerned.

[100] Mr. Neal. While Mr. Wheeler is discussing something else, let's go on to the MacDonald——

Mr. Wheeler. Jim?

Mr. Errichetti, in a transcript of the March 8 meeting between—or conversation—no, it is a meeting between you and Tony Amoroso, Mel Weinberg and Feinberg is also present, you say to the other people who were present, "the CD's are all typed, stamped, you know, signature stamped. Each one has been wiped with a pumice," and then you said Mel told you to take a ball and throw that away. "Errichetti: That is—blank—in the river."

Mr. Errichetti. That is right. At the instructions—I didn't elaborate. He said, "make sure they are wiped clean, throw the ball away and get the CD's back to me."

Mr. Wheeler. What is the ball?

Mr. Errichetti. The ball on the—when you type.

Mr. Wheeler. What is the signature stamp?

Mr. Errichetti. It is a name of a person. You stamp his name on it.

Mr. Wheeler. So it wasn't just a question of typing them. You were also supposed to stamp them?

Mr. Errichetti. I did that.

Mr. Wheeler. You personally did that?

Mr. Errichetti. Two offices down, city engineer.

Mr. Wheeler. Who was it?

[101] Mr. Errichetti. Charles Shoemaker. Without his knowledge.

Mr. Wheeler. We have 13 minutes before we are going to break for an hour at lunch. The transaction I would like to cover with you is one pertaining to a man named Edward Ellis.

Do you know who that is?

Mr. Errichetti. Yes.

Mr. Wheeler. When did you first meet Edward Ellis?

Mr. Errichetti. I know him and his business associate, Frank Acconey—I went to school with Frank.

Mr. Wheeler. Who is that, Frank?

Mr. Errichetti. Acconey, A-c-c-o-n-e-y.

Mr. Wheeler. Did he also have a business associate by the name of Hyman?

Mr. Errichetti. Hyman? Not to my knowledge. Maybe he did, but not to my knowledge.

Mr. Wheeler. Did there come a time in late February or early March of 1979 when you arranged for the introduction of Ellis to Weinberg?

Mr. Errichetti. I did not arrange the meeting.

Mr. Wheeler. Do you know who did?

Mr. Errichetti. My guess, Feinberg.

Mr. Wheeler. But you found out that Ellis did talk to Weinberg?

Mr. Errichetti. Yes.

Mr. Wheeler. When did you find that out?

[102] Mr. Errichetti. After they met, I believe, but I think Mel—I presume Mel told me after they met, or that is my recollection.

Mr. **Wheeler**. Did you talk to Ellis about his meeting with Weinberg at any time?

Mr. **Errichetti**. I may have. I am sure I did because I know Ed very well.

Mr. **Wheeler**. Did you talk to Ellis before Ellis talked to McCloud?

Mr. **Errichetti**. Maybe. Again, I don't know when he talked to McCloud.

Mr. **Wheeler**. Did you ever talk to Ellis about his upcoming conversation with McCloud and tell Ellis anything to say?

Mr. **Errichetti**. What for him to say?

Mr. **Wheeler**. That is right.

Mr. **Errichetti**. For Ellis to say to McCloud?

Mr. **Wheeler**. That is right.

Mr. **Errichetti**. No, just that he was buying a racetrack, if I remember correctly, and he needed funds for the race track; and I think I said to him, they haven't produced anything yet. I cautioned him on that. Now, whether they had the abilities to lend him $15 million or $20 million, whatever he needed—I just wanted to alert him he wasn't there for the pickings. There hadn't occurred any loans at that time, so I **[**103**]** cautioned him: don't get your hopes up real high that you are going to go up there and get your money and build your racetrack.

Mr. **Wheeler**. Let me read from a transcript of March 8, 1979, a conversation participated in by you, Mr. Amoroso, Mel Weinberg and ultimately Alex Feinberg.

Weinberg says:

> Now, the reason I want to meet with Feinberg is a friend, Ellis, has told Jack [referring to McCloud] that Feinberg is the bagman for Williams and Williams is behind it and they agreed to pay. Now, does Feinberg know about it?
>
> **Errichetti**. No, Feinberg ain't nothing; he's my front; he's Williams' bagman, that's true.
>
> **Weinberg**. Yeah.
>
> **Errichetti**. That's what I told Ellis to say.
>
> **Weinberg**. Oh.
>
> **Errichetti**. Cause, you know, [inaudible] will—Feinberg's been so discreet over the years——
>
> **Weinberg**. How can we arrange for him to put the money up.
>
> **Errichetti**. I tell [inaudible] Ellis what to do.
>
> **Weinberg**. But he told him Feinberg's coming up to take it.
>
> **Errichetti**. How much?
>
> **Weinberg**. A hundred grand, $10,000 down.
>
> **Errichetti**. And when are you supposed to give it to him?
>
> **[**104**]** **Weinberg**. No, this is one of the reasons I wanted to speak to Feinberg, because as soon as he's ready.
>
> **Errichetti**. Feinberg ain't the guy. I just told Feinberg to go up there and accompany him because Pete Williams' man, no other reason. Ellis belongs to me lock, stock, and barrel.
>
> **Weinberg**. Well, how we gonna work that then?
>
> **Errichetti**. Is Jack to give him the money, Feinberg?
>
> **Weinberg**. Yeah, in fact, Jack wants to give it to Williams.
>
> **Errichetti**. Oh, you can't do that.
>
> **Weinberg**. Well, if he could arrange he'd probably give Pete Williams twenty five, if he could arrange it. Why don't you work on it, see what you can do?
>
> **Errichetti** [inaudible]. Ellis don't even know each other. They do, but they don't. He said send somebody the [inaudible] up here, remember? So Feinberg went up there instead of uh—another politician.

Now, at one point in that conversation I just read you said, "That is what I told Ellis to say."

Did you in fact tell Ellis what to say to McCloud?

Mr. ERRICHETTI. I don't think so.

Mr. WHEELER. Why did you——

Mr. ERRICHETTI. Why did I—again, back to the ingratiating to the sheik, but I can do these things, coming on strong, [105] pretending, saying, but not really having the abilities to control any of those people.

Mr. WHEELER. Mr. Errichetti, this conversation is not a conversation attended by McCloud.

Mr. ERRICHETTI. I understand.

Mr. WHEELER. This conversation is you and Weinberg and Amoroso at this point, just the three of you. Why are you saying that to Amoroso and Weinberg, that you told Ellis what to say to McCloud?

Mr. ERRICHETTI. Well, I believe that my motive was one of saying, I control and told Ellis because he had to be my man versus being circumvented by them. I was trying to protect my interest with them so he wouldn't go around my back, meaning Ellis and Amoroso and Weinberg, having the opportunities without me. OK.

Mr. WHEELER. So at this point now it is a triple scam. You are lying to Weinberg and Amoroso, who were lying——

Mr. ERRICHETTI. Protecting your interests is a better word.

Mr. WHEELER. But you were lying to them, is what you were saying?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. About you had told Ellis what to say?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. You also said in this conversation, where [106] McCloud is not present, you say, "It is true, he is my front: he is Williams' bag man That's true."

Mr. ERRICHETTI. What is true?

Mr. WHEELER. That he is Williams' bag man; that Feinberg is Williams' bag man, and again McCloud is not present.

What caused you to repeat that statement to Weinberg and Amoroso on March 8?

Mr. ERRICHETTI. Nothing. I said to you earlier in the day that that was a common tab for Alex. There was nothing unusual—if anyone in that area had heard that Alex was a bagman for Pete, they laughed and that was the end of the conversation. It was nothing that—it is derogatory and it was not derogatory, meaning in our area. Sitting up there it sounds derogatory. Follow me?

Senator RUDMAN. Are you saying, Mr. Errichetti, it is a matter of common practice in New Jersey that all politicians have a bag man?

Mr. ERRICHETTI. No, because the friendliness between Pete Williams and Alex Feinberg went back over many, many years, since 1958. They have been so closely allied that was an innuendo. Whether it is true or false, I don't know, Senator. I was never part of that bag. Giving or taking.

Mr. WHEELER. So I understand your testimony, Mr. Errichetti, it is your testimony that you and Weinberg did not [107] in fact enter into some kind of agreement or some kind of conspiracy in advance to get Ellis into this picture?

Mr. ERRICHETTI. I think I was trying to insure the fact that there was no circumvention by those other two without my knowledge. I was letting them know that I knew that he was going up there because the person that was going to take them up there was supposed to be Congressman [deleted].

Mr. WHEELER. Take them to where?

Mr. ERRICHETTI. New York. That politician you just mentioned in your transcript reading.

Mr. WHEELER. Congressman [deleted] was supposed to take who?

Mr. ERRICHETTI. Mr. Ellis. That is where I think he was chatting.

Mr. WHEELER. Congressman [deleted] was supposed to take Mr. Ellis up to McCloud?

Mr. ERRICHETTI. If you read that last line, that is what is——

Mr. WHEELER. The last line is:

> Ellis don't even know each other. They do, but they don't. He said send somebody the, blank, up here, remember? So Feinberg went up there instead of uh—another politician.

Who had arranged for [deleted] to go up to see McCloud?

Mr. ERRICHETTI. Alex Feinberg.

Mr. WHEELER. That had nothing to do with you?

Mr. ERRICHETTI. No, no.

[108] Mr. WHEELER. Did you expect to get any share of the finance that would be used to finance the Garden State Raceway?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. How did you expect that?

Mr. ERRICHETTI. By insuring that there would be no circumvention; that I would know what was going on, arranging for a loan that I was not the initiator of, so to speak. I was insuring that.

Senator RUDMAN. This is probably a convenient time to break the questioning.

The committee will stand in recess for 1 hour until 1:30.

[Whereupon, at 12:25, the committee recessed.]

[109] AFTERNOON SESSION

[Whereupon at 1:30 p.m., the committee reconvened, the Honorable Walter D. Huddleston presiding.]

Senator HUDDLESTON. The hearing will come to order. We will resume the questioning by the counsel.

Mr. WHEELER. Just for the information of the witness, on my right now is Senator Huddleston as opposed to what the sign says.

Mr. Errichetti, does the name Frank Pulini mean anything to you?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Who is Frank Pulini?

Mr. ERRICHETTI. He's a produce merchant in the city of Camden.

Mr. WHEELER. Did you ever go to Frank Pulini to ask him to produce any phony bank securities?

Mr. ERRICHETTI. Instruments?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. What they were I don't know exactly by name, but yes.

Mr. WHEELER. When was that?

Mr. **Errichetti**. Time frame, Mr. Counsel, I really do not remember the time frame, but it was, I got to guess spring for a generalization.

Mr. **Wheeler**. Of 1979?

Mr. **Errichetti**. Yes, sir, and where these documents were handed to me in Long Island by Mr. Weinberg, and there were various colors, and there was some banks like. I think there [110] was a bank of Nova Scotia for, I think I remember that as being one of the banks.

What they were as far as the instrument, whether they were letters of credit or whether they were CD's I do not know. But the important thing was that they were to be reprocessed or reproduced with the proper paper, and these were the instructions that were given to me, and I assured him that it could be done through a gentleman friend, this Mr. Pulini, who had a printer friend. OK.

I'm trying to clarify something because I think previously during the earlier testimony you had me confused as to me taking samples or whoever down to Florida, which is not true. I'm trying to clarify that point for you.

Mr. **Wheeler**. Now, Mr. Errichetti, I am going to—the next major incident I want to deal with is the incident involving Commissioner Kenneth MacDonald, but I want to ask you one question or a couple of questions here first about some of your earlier testimony.

You testified this morning, I believe, that—you mentioned this morning that you did not know Congressman Ozzie Myers before you met him on August 22, 1979, is that correct?

Mr. **Errichetti**. That is true. When you say know a gentleman, you know, I knew of his title. I knew of the gentleman, but I did not know him to—as a bosom buddy, OK? He was not even a political—he was over the other side of [111] the river. He was in the First Congressional District of Philadelphia. So I did not know him except by reputation when he was a congressman or whatever.

But I did not meet him ever. Maybe shake his hand at an affair, political affair, but nothing where a conversation existed, except at that time prior to him going in with me to meet with the Abdul people.

Mr. **Wheeler**. And you, in fact, so testified, didn't you, in in camera testimony in due process hearings in Philadelphia in September of 1980, that you had not known Ozzie Myers before August or September of 1979?

Mr. **Errichetti**. August.

Mr. **Wheeler**. Yes.

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Are you aware that Ozzie Myers testified on August 25, 1980, and stated, "Of course, I knew Mayor Errichetti." This is before August 22, 1979:

> Of course, I knew Mayor Errichetti because of any number of other transactions in the Port of Philadelphia which, of course, includes his city, the Port of Camden. We met on the Pennjerdel Corporation. That's a corporation that takes in the whole Delaware Valley, Philadelphia, New Jersey and Camden, the port. I knew Ang and said hello and he grabbed me by the arm and pulled me on the side on August 22, 1979.

Is it your testimony that when Ozzie Myers made that [112] statement he was committing perjury?

Mr. FURST. Well, I do not understand the question. When was he—when did he pull him aside?

Mr. WHEELER. On August 22.

Mr. ERRICHETTI. That was the day of the video tape?

Mr. WHEELER. That's the video taping day.

Mr. ERRICHETTI. I was at the airport with him. That is where I met him.

Mr. WHEELER. Right. And Ozzie Myers testified that before that date:

> Of course, I knew Mayor Errichetti because of any number of other transactions in the Port of Philadelphia which, of course, includes his city, the Port of Camden. We met on the Pennjerdel Corporation. That's a corporation that takes in the whole Delaware Valley, Philadelphia, New Jersey, and Camden the port.

And then referring to what happened on August 22, "I knew Ang and said hello. And he grabbed me by the arm and pulled me on the side."

Mr. ERRICHETTI. At the airport?

Mr. WHEELER. That's right.

Mr. ERRICHETTI. Well, I was introduced to him by Mr. Criden. Criden brought him up, or Criden or Johannson.

Mr. WHEELER. So you're saying that, in fact, it was a false statement for Ozzie Myers when he said——

Mr. ERRICHETTI. What I am saying is, as I said earlier, [113] in regards to meeting someone, saying hello to someone does not mean that you know them except, yes, that's Congressman Myers and yes, I am Mayor Errichetti, because of exposure by the media or whatever have you.

Mr. WHEELER. "Any number of transactions in the Port of Philadelphia."

Mr. ERRICHETTI. To the best of my knowledge, if he says on the Pennjerdel which is a combination of business and politicians, I may have met him there or said hello to him, but nothing except in the way of court activities or that general meeting that occurred.

So I was not, you know, as I said, knowing someone on that basis is not my intepretation of knowing someone I am friendly with.

Mr. WHEELER. All right. Now, the taping session, the payoff with respect to Mr. Kenneth MacDonald occurred on March 31, 1979, do you remember that date?

Mr. ERRICHETTI. Oh, sure.

Mr. WHEELER. Did you meet with Mel Weinberg the day before on March 30, 1979?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. For approximately 4½ hours.

Mr. ERRICHETTI. Whatever the time was.

Mr. WHEELER. But it was for a long time?

Mr. ERRICHETTI. It seemed that way.

[114] Mr. WHEELER. When did you arrange that meeting with Mel Weinberg?

Mr. ERRICHETTI. Well, you have to understand, sir, I have to go back to try to give you the total picture versus, you know, plucking out an incident. This speech or this whole dramatization where I had conveyed to Weinberg from the very outset, you know, that he knew there was no way that Ken MacDonald or any other commissioner was to be approached by me or anyone else because it was not necessary to do so.

As I said earlier in regards to establishing with Mr. McCloud, oh, yes, that there was $100,000 that they wanted and that they were going to divvy it up, and those kinds of things, that was not true, except for the ears of McCloud so that he can get his act together with whoever he had to get his act together.

Weinberg knew the truth as I am saying it to you. During that month, there was many ways of trying to explore with me by Mr. Weinberg who best to get Mr. MacDonald up to New York that would be not less obnoxious to him. OK?

And they devised, as you said earlier in regards to hanging out the window or stand down in front waving from windows, open windows, and whatever have you. So it was like four or five or six or seven different plans that were proposed to me by Mr. Weinberg that I refused to go and chat with Mr. MacDonald because Mr. MacDonald was a very nice person, a [115] very kind person, very thoughtful person, had a nice reputation. He wanted to do a job. He was trying to do a job. I would never approach him and say, "Look, Ken, you are going to get x number of dollars. We are going to get a scheme going or whatever have you." That was not the case.

But what he did have and I was asked to approach him on trying to get him into the room so the appearance would be that he was to receive the $100,000, was to see if we could put together a scenario that was acceptable, and they suggested and I say "they" meaning Abdul for a better word, Mel, but there was various plans rejected apparently by McCloud or someone and I don't know who they were that were proposed and they were plans rejected by McCloud or whoever.

Finally one was acceptable. They said to me, "What do you think of this plan?" He says:

"Look, he wants to get out as a commissioner in the next year or 2. He has a son who's a nice young man. We are going to go in business. We have got some money put aside for our future business of a consulting operation with Amoroso and Weinberg and myself. Let us incorporate him and his son into this network of operations so we can have the expertise of many people that can provide a professional service in that general area."

I said, "Well, how do I get him up there for me to go get a suitcase?" He said, "Well, propose that the dollars you are going to receive that they will give to you," meaning me. [116] These dollars will be put aside in an escrow account for the business that we are going to establish down the pike, meaning a year or 2 that all of us had to go in our term of office, whether it was mine or it was his.

I said, "Well, I do not know. I will try. I will talk to him and see if he will accept, because he may accept because his son who has been a nice person and I guess he has got his heart and soul in the youngster trying to, I guess, further his life, his livelihood and whatever"——

Mr. **Wheeler**. Now, when you say he may accept, exactly what is it that you had in mind.

Mr. **Errichetti**. The business proposition of me going up for a commission, and he was going up to verify the fact that I was going for a commission and the moneys would be returned to Mr. Weinberg to be put into an account so that it can be down the road for a, I guess a cushion for funding for a corporation that we were going to put together.

Senator INOUYE. Will you yield on that point?

Mr. WHEELER. Yes, Senator.

Senator INOUYE. Was it your understanding it was a commission?

Mr. ERRICHETTI. I was to say that it was a commission.

Senator INOUYE. Oh, you were to say it was a commission. But in your mind it was not a commission?

Mr. ERRICHETTI. No. It was for me, Mr. Weinberg and [117] Mr. DeVito, and I will explain that, sir, to you.

Senator INOUYE. An illegal receipt?

Mr. ERRICHETTI. Much as we talked about earlier in this scam upon a scam, engineered by Mr. Weinberg.

Mr. WHEELER. The part that I do not understand, Mr. Errichetti, and I would like you to clarify is what is it that Mr. MacDonald had to accept? What is it you were trying to get him to accept?

Mr. ERRICHETTI. Nothing, except to go up there for a ride so he can be put on camera as he was and that they could indict him at a future date and say he accepted the money.

Mr. WHEELER. But you did not know that at the time.

Mr. ERRICHETTI. I knew I did not—I was trying very simply with the instructions from Weinberg to be able to get the $100,000, and he knowing full in advance that Mr. MacDonald would receive nothing.

Mr. WHEELER. Right. And what I am asking you is what was it that you were trying to get Mr. MacDonald to accept? What was it that you were trying to get Mr. MacDonald to believe?

Mr. ERRICHETTI. That there was an opportunity in the future for a corporation, partnership, business venture that would incorporate MacDonald, his son, myself, Mr. Weinberg and Mr. DeVito, and the dollars that I was going to receive at that meeting was for this funding of this corporation so that when everyone left office at their particular times, they would [118] be ready, willing, and able to fund office space, dollars to be able to pay salaries and not have a bankrupt organization before you start it.

Mr. WHEELER. Did you tell Mr. MacDonald why he was being included in this start for the future?

Mr. ERRICHETTI. Did I tell him why?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. Basically yes. That is what I am saying.

Mr. WHEELER. What did you tell him?

Mr. ERRICHETTI. This is what was discussed between Weinberg and myself. He is suggesting that I try this on for size, like the 19th plan for instance.

But I had not approached Mr. MacDonald prior to that. So this one makes sense maybe. But I will only talk to him about him going into business because I know he wants to get out, meaning MacDonald, and this may be palatable to him to take a trip up to Long Island with me and to see the operation, meaning me getting a commission.

So Weinberg says, "Go ahead. If you can get that sold, then McCloud and company will go along with the other end." OK. Is that clear now?

Mr. WHEELER. Go ahead.

Mr. NEAL. It is not clear to me.

Mr. WHEELER. Well, he has not called MacDonald yet. That is what I am waiting for.

[119] Mr. ERRICHETTI. I have not called MacDonald yet, no. No; I am saying this is all between Weinberg and myself——

Mr. WHEELER. Right.

Mr. ERRICHETTI [continuing]. Trying to establish a plausible explanation for this gentleman to go to Long Island with me for the ride.

Mr. WHEELER. And now you are going to call MacDonald.

Mr. ERRICHETTI. I did. Called Ken and met with him.

Mr. WHEELER. What did you say to MacDonald?

Mr. ERRICHETTI. Basically what was in my own words that was told to me as to being accepted by McCloud and company to propose for him the opportunity when he left office that his son, that he, myself, Mel, and Mr. DeVito would have this commission, and I was to receive a commission from a previous transaction that I was to collect and receive Saturday, for a better day, and I think that was the day I went up there. This may have been like Tuesday or Wednesday or something.

And I convinced him that, in my own way, that this seemed to be the way to go, because, you know, being a commission, you are reappointed, may not be reappointed, whatever have you, lay your nest egg with us, and he had to do nothing except go with me up there, see that I was—what I was telling him was for real with regards to the funding, with regards to the bodies, meaning Weinberg and DeVito and myself.

He said, "Fine. We will go for the ride." I says, "First, [120] we have to go to the Cooper Medical Center for a dedication service."

Mr. WHEELER. Let me stop you before that because I still want to know something more about what you told him. Did you tell him that when you were planning to go up there on March 31 that he would see McCloud?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. You told him that?

Mr. ERRICHETTI. McCloud was going to give me a commission.

Mr. WHEELER. And he had already met McCloud——

Mr. ERRICHETTI. Yes, he knew McCloud.

Mr. WHEELER [continuing]. On March 5th——

Mr. ERRICHETTI. We had lunch or we had dinner together or something.

Mr. WHEELER. Are you aware that Mr. MacDonald told the FBI during the time when he was trying to convince them not to indict him that when he showed up at Abdul Enterprises' offices on March 31 and walked in the room that he was absolutely shocked to see McCloud there because he had no idea that is who it was going to be, and he knew that he had no business being in the same room with McCloud when there was going to be money passed from McCloud to you?

Mr. ERRICHETTI. Well, I am telling you the truth, fully, as to what was said and the facts.

Mr. WHEELER. So, is it correct, then, that what you——

[121] Mr. ERRICHETTI. What is correct is what I am telling you.

Mr. WHEELER. What I am asking you is, Is it your testimony, then, that the reason that MacDonald went with you on the 31st to Abdul Enterprises offices is because he expected that at sometime in the future this trip would lead to his participation in a business venture with you and McCloud and DeVito and Weinberg?

Mr. ERRICHETTI. Not McCloud.

Mr. WHEELER. All except McCloud.

Mr. ERRICHETTI. DeVito, myself, Weinberg, he, his son and I.

Mr. WHEELER. Did you tell him why DeVito and Weinberg were willing to include him in on the deal?

Mr. ERRICHETTI. Expertise and because, naturally, the importance of him in their minds, knowing what their ultimate was, to bring him before the cameras. Now, I didn't know that and he didn't know that, "he" meaning MacDonald.

Mr. WHEELER. But you say Mr. McCloud wasn't to be included in this business transaction and yet he was going up there to see McCloud hand you the commission money. How did you explain that to him?

Mr. ERRICHETTI. I just told you. I was to receive a commission from a previous transaction that they owed me, quote, unquote, McCloud, or Abdul. That the money I was to receive was to be put in escrow account for a business that was going to be incorporated by Mr. Weinberg and Mr. DeVito. [122] It would include the following people I told you.

Mr. WHEELER. Why did he have to see you—what did you do to make him believe that he had to see you get the money? Why was that a significant event as far as he was concerned?

Mr. ERRICHETTI. Well, what I said to him was sufficient for him to believe, and he was satisfied that I was telling the truth. He said, "I'll go for a ride."

Mr. WHEELER. Did you tell him that the other people wanted to see him?

Mr. ERRICHETTI. I told him I was receiving a commission from Abdul Industries; McCloud. That's all he knew was Abdul Industries; McCloud.

Mr. WHEELER. Did you tell him that McCloud wanted to see him?

Mr. ERRICHETTI. No. McCloud was going to give me a commission and that I wanted him to go up to verify the fact that I was receiving a commission and the money I was going to receive was going to go into an escrow account for a future business that was going to include him and his son along with others down the road.

Mr. WHEELER. Jim?

Mr. NEAL. He is going to take a trip, a several-hour trip to go up there and watch you receive money——

Mr. ERRICHETTI. That is right.

Mr. NEAL [continuing]. That you told him you would need——

[123] Mr. ERRICHETTI. Yep.

Mr. NEAL [continuing]. For a prior deal that was down the road?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. And that is it?

Mr. ERRICHETTI. Yes, sir. There was no conversation from me that day or any other day in regards to any bribe offers.

Mr. NEAL. And he was going to take your word.

Mr. ERRICHETTI. Sir?

Mr. NEAL. Did he not say, "Well, wait a minute, Angelo. Why do I have to go up there? Let him give you the money, and we will put it in escrow. Why do I have to take this drive?"

Mr. ERRICHETTI. I must have been a little persuasive.

Mr. NEAL. What did you use to persuade him other than this?

Mr. ERRICHETTI. I said we are going to spend the day. We are going to the Cooper Medical dedication to cut the ribbon which I was doing. We would take a ride up. We would have dinner, relaxing. My nephew was driving the car so we could really relax and just talk and get to know each other better than we had known each other. We never had a chance to really sit down and chat.

He said that would be great to have nothing to do, and I'll go with you, and he did.

[124] Mr. NEAL. Knowing how much you were going to receive there.

Mr. ERRICHETTI. I told him $50,000.

Mr. NEAL. $50,000?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Have you seen a tape of that meeting? Have you seen the video tape?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Do you remember that there comes a time when you say, "I've come for the money for the future, my boy?" And immediately upon your saying that, MacDonald quite literally runs to the window and begins to peer out the window?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Had you agreed with MacDonald on that as a signal for him to run to the window?

Mr. ERRICHETTI. No, sir.

Mr. WHEELER. Do you know why he ran to the window?

Mr. ERRICHETTI. I guess fear.

Mr. WHEELER. What was he afraid of?

Mr. ERRICHETTI. When Mel opened up the suitcase.

Mr. WHEELER. But he did not wait until the suitcase got opened up. You were standing on one side of the desk, and you said, "I've come for the money for the future, my boy." And he, at that point, ran to the window, and you and McCarthy [125] had to walk to the other side of the desk in order to get to the briefcase for it to be opened up.

Mr. ERRICHETTI. He was quite upset, to say the least.

Mr. WHEELER. Because you said, "I've come for the money for the future?"

Mr. ERRICHETTI. That was the words that McCloud wanted to hear.

Mr. WHEELER. I know. But why did that upset MacDonald, if he knew you were there to pick up a commission?

Mr. ERRICHETTI. Well, I cannot explain, you know, the anxieties and the apprehensions and the thoughts that went through his mind at that particular time why he ran to the window or whatever.

Mr. **Wheeler**. Did you notice when he did it that he ran to the window?

Mr. **Errichetti**. No, I did not. I noticed it on the tape when I saw it, but I know that he was angry thereafter because he was angry in regards to the appearance of the transaction of dollars.

And it was when I was saying, "Well, it will be returned. Don't worry, Ken. It will be returned." Not only did I say that but also Weinberg and Mr. DeVito at the Holiday Inn a half hour or 20 minutes later.

They assured him it would be returned, and they apologized for the bungling of McCloud, the way he opened up the suitcase, **[126]** and he got extremely nervous, himself, if I remember correctly.

Mr. **Wheeler**. When you talked to MacDonald before March 31 for setting this thing up and you told him you were going to get this money from McCloud, did he say to you, "Wait a minute, Angelo. I met with this guy McCloud on March 5 for several hours and we talked about his application for Abdul Enterprises for a casino license. I can't be in the same room where there is money being passed for any reason with that man." Did he say that to you?

Mr. **Errichetti**. No, he did not. I would have expected him to say that, but he did not.

Mr. **Wheeler**. Did you ever talk about that on the way up on the 3-hour drive up there?

Mr. **Errichetti**. No. We talked about generalities, the Republican Party which he is a member of, the Democratic Party which I am a member of, idle chatter, nothing of any consequence.

Mr. **Wheeler**. On the tape, you enter the room first and have a conversation of several minutes with McCloud before MacDonald enters the room. Was that prearranged?

Mr. **Errichetti**. I am not really sure.

Mr. **Wheeler**. Do you know why MacDonald did not come in the room with you?

Mr. **Errichetti**. He did.

Mr. **Wheeler**. Not at first. Not for about 10 minutes.

[127] Mr. **Errichetti**. Well, I don't know the reason. I don't remember what the discussion was. I am sure it was one of, is he ready? Oh, everything is set. Everything is fine. That kind of assurances for me to him that everything was fine, everything was set up.

Mr. **Wheeler**. You don't recall discussing with MacDonald beforehand that he should wait outside while you set up the transaction to the point where he should come in?

Mr. **Errichetti**. Excuse me?

Mr. **Wheeler**. You didn't discuss with MacDonald that he should wait outside while you set up the transaction and get it to the point where he should come in?

Mr. **Errichetti**. I don't think so. I think it was a question of, "just let me chat with Mr. McCloud for a moment and then I will ask you to come in at another timeframe."

Mr. **Wheeler**. There was no discussion during the course of that meeting about this future corporation; was there?

Mr. **Errichetti**. On tape?

Mr. WHEELER. That is right.

Mr. ERRICHETTI. Well, MacDonald was not taping me and I was not taping MacDonald.

Mr. WHEELER. No. I am talking about at the meeting where you were present, McCloud was present, and MacDonald was present. On March 31, there was no conversation about this future business transaction.

[128] Mr. ERRICHETTI. Weinberg had alerted McCloud of the reluctance of MacDonald, whatever it was, and basically it was one of a keyword was set up between Weinberg telling McCloud he's going to say there's a key to our future, or something of that effect, and that was agreeable to McCloud.

Mr. WHEELER. But MacDonald did not know that? MacDonald thought he was up there to witness your getting a commission that was going to help you and MacDonald ultimately to enter into a business deal with other people from Abdul Enterprises?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And yet that was not discussed at all on tape. Why did not MacDonald say something about it?

Mr. ERRICHETTI. I can't speak for MacDonald. I just know that is what happened, and I just tell you truthfully what happened and that is all I can tell you what happened. I cannot conjecture about someone else; what they should have said or did not say.

Mr. WHEELER. When you left that meeting——

Mr. ERRICHETTI. Wait a minute. Let us get it in order. You asked me about the day before. OK?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. The day before, the 4½-hour meeting was one of logistics with Weinberg and myself because I had gone back to him and said, "OK. He is amenable to coming up for a ride." I gave him the facts as I know them [129] to be from MacDonald.

He says, "OK. I will take care of everything else," in regards to he is going to come in, the key to success or whatever it may be, the whole 9 yards. He had to then clear it with McCloud that they, because there was no sense coming up for a ride unless it was cleared by whoever had to clear it in regards to me accepting it, me getting the envelope or the suitcase or whatever it was and the words that were going to be used, and he not accepting anything, him looking out the window or whatever he was doing, standing still, whatever it was.

He did a minimal amount of anything, meaning MacDonald.

Mr. WHEELER. Is it your contention that, in your mind, you think now that MacDonald saw no connection between the application of Abdul Enterprises for a casino license and the event of March 31, 1979?

Mr. ERRICHETTI. Truthfully, I would say he had no connection in his mind. I had represented to him that I was going to receive a commission for a previous commission for a transaction that I promoted and was able to consummate, and for that I was receiving $50,000 commission for that services rendered.

Mr. WHEELER. Do you know a man named Myron Levin?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. Do you recall having conversations with [130] Myron Levin, in October of 1979?

Mr. ERRICHETTI. He taped me coming to my home. A friend of the family, my brother particularly, not I, for a good number of years. I was again procrastinating with him because I felt uneasy with him, and I was making speeches to him.

Mr. WHEELER. He was a friend of your family, though?

Mr. ERRICHETTI. My brother.

Mr. WHEELER. And you say you were procrastinating with him and making speeches to him in October of 1979?

Mr. ERRICHETTI. He wanted to talk about somebody in Mississippi that wanted a license and so forth. I went along with the act with him.

Mr. WHEELER. Did you not tell Myron Levin that you had, in fact, paid money to Kenneth MacDonald in connection with getting a casino license?

Mr. ERRICHETTI. I believe so. That is a lie, but I told him.

Mr. WHEELER. Why did you tell him that?

Mr. ERRICHETTI. Again, we are going back to the, with this gentleman anyway, to that yes, things could happen if he had people in Mississippi that wanted to put up moneys for an opportunity to build a casino, they were welcome to do so, and that I had the strength to do so.

[131] Mr. WHEELER. You had also told Levin that you had made payments to [deleted].

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Was that also not truthful?

Mr. ERRICHETTI. Not true.

Mr. WHEELER. You also told Levin that you had made payments to Senator Williams?

Mr. ERRICHETTI. Not true.

Mr. WHEELER. Did you make such statements to Levin?

Mr. ERRICHETTI. I made the statements.

Mr. WHEELER. And it was not true when you made it?

Mr. ERRICHETTI. Not true.

Mr. WHEELER. You did not know you were being taped when you made those statements to Levin, did you?

Mr. ERRICHETTI. I felt that I was.

Mr. WHEELER. What made you think that?

Mr. ERRICHETTI. Knowing the individual.

Mr. WHEELER. What did you know about him that made you think he would be taping you?

Mr. ERRICHETTI. A snake in the grass by reputation.

Mr. WHEELER. Did you tell that to your brother?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. You told your brother that you thought you were taped?

Mr. ERRICHETTI. Yes.

[132] Mr. WHEELER. When did you tell your brother that?

Mr. ERRICHETTI. After he came to my house unannounced.

Mr. WHEELER. If you thought you were being taped, why did you make these statements to him?

Mr. ERRICHETTI. I did not believe they were consequential, anyway. Although I know later that he used that for his release from jail, the cooperation with Abscam, before Judge Stanley Brockman in Camden.

Mr. Wheeler. When you left the meeting which McCloud at which McCloud handed you the briefcase, what did you then do?

Mr. Errichetti. That was a little confusion, not only with Mr. McCloud, with Mr. MacDonald, because he was extremely nervous by the appearance that it may have hit him in the head or maybe dawned upon him that that particular time that there could have been an appearance of impropriety on his part. And he became extremely nervous about that. And it was a question of trying to calm him down that that was not true, that the dollars were what I said they were for, and that they were going to go into this account, and they were going to be returned to Weinberg so he can put it in the account. And that was also represented by Weinberg and DeVito, as I said, a half hour or so later at the Holiday Inn where we were having a sandwich, and after that meeting. When I left the office with Mr. MacDonald, I handed the briefcase to my nephew and told him to put it in the car, which he did. MacDonald and [133] I went into the bathroom, the men's room. And he was again flushed, and I was doing my level best to try to calm him down from—very excitable person, meaning in that particular stage in his mind. I calmed him down to the point where we left the bathroom, or the men's room, and then went out to my car. We drove to the Holiday Inn, assuring him that everything was boxed up and that McCloud was incompetent and that it would be rectified and that the money would be returned. So there would be nothing said of that from henceforth.

Likewise, thereafter, DeVito and Weinberg both came in, and I explained to them that, at a side bar, that they—he was extremely nervous and that he was totally upset at the appearance of him being involved with Abdul and the casino association, which he did not want to give that appearance because it was not true.

Mr. Neal. What were you going to do about getting your commission back? Why would you tell him you were going to return the commission that you were entitled to?

Mr. Errichetti. I was giving the money to Weinberg to put in escrow. I was not going to receive it as per se for my own keeping. I related to him and represented to him that the money was going to Weinberg into an account for a company that was going to be formed. The money was going to be used for the funding for the new company.

Mr. Neal. Did you tell him we are just going to call the [134] deal off? Is that what you were saying?

Mr. Errichetti. Basically, without saying those exact words, sir.

Mr. Wheeler. What was your agreement with Weinberg before the March 31 meeting, the actual payoff? What was your agreement with Weinberg as to what would be done with $100,000 once you got it?

Mr. Errichetti. That was on the day before the actual transaction.

Mr. Wheeler. That is March 30?

Mr. Errichetti. Yes.

Mr. Wheeler. That you reached the agreement?

Mr. Errichetti. Yes.

Mr. Wheeler. And what was the agreement you had with Weinberg?

Mr. **Errichetti**. The final, I guess, scenario was one of—I was going to receive the moneys, drive MacDonald home, then I go to my home, which I did. He would call me at 10 o'clock or thereabouts that evening. And I had to verify over the phone that MacDonald received the moneys, that MacDonald was extremely pleased at the end result, and that he would be most happy and appreciative and sincere in returning $25,000 to DeVito because there was a fire on this boat that they had in Florida. There was no insurance. And that, if Tony did not have the money to fix that boat up prior [135] to the sheik's coming to town, Tony might get fired. So the $25,000 was extracted from MacDonald with pleasure, and he was very happy to give back $25,000 to help Tony because he is a nice fellow.

$37,500 was to go to me. And $37,500 was to go to Mel Weinberg.

Now, that is not me saying it on the phone, $75,000 went to MacDonald. $25,000 was given back to me to give to DeVito. Because I had to relate that to him over the phone because Margo Kennedy was going to be on the extension line listening in so that she could report back the sheik everything went well, he received his money, and we have our guarantee for a casino, and everything is on its way.

Mr. **Wheeler**. First, when you reached the agreement with Weinberg on March 30 as to how the money was going to be divided, you said that $25,000 was going to go back to Amoroso to fix the boat——

Mr. **Errichetti**. No; he said.

Mr. **Wheeler**. That is what I am saying. This is the agreement you reached with Weinberg.

Mr. **Errichetti**. I am listening. He is propose——

Mr. **Wheeler**. Right.

Mr. **Errichetti**. Right. Okay.

Mr. **Wheeler**. You are going to get back $37,500? Weinberg is going to get $37,500?

[136] Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. That means that, as to this agreement, Weinberg was proposing to cut out DeVito; right? Your understanding before had been that Weinberg and DeVito were trying to cut out the sheiks. They were trying to scam the sheiks.

Mr. **Errichetti**. You know, I am listening. When he says $25,000 goes to DeVito to fix the boat up, I have to believe that; okay? What they were doing behind the closed doors, that is another matter, sir. But the fact of the matter is that was the agreement proposed to me by Mel Weinberg, which we carried out in detail and including the phone call. That was Saturday night when I returned home after dropping MacDonald off and telling my nephew we are returning back to Long Island tomorrow. The phone rang. I spoke to him. And I gave him the speech. Everything was hunky-dory. Everybody is happy. And MacDonald's tickled to death. And that cemented it to, I guess, whoever was listening or the tapes that we used, you and I know were made Saturday night and not Sunday afternoon, when I was meeting him in New York on the Long Island Expressway, when my nephew drove me to Exit 55 or 54. When I got there, I made the phone call to his home. And he answered it. And he said, "I am here." Within a matter of 5 minutes, 10 minutes, he was there with his Lincoln. He pulled up. I got out of the car, and I gave him the suitcase with $37,500 in it.

[137] Mr. **Wheeler**. All right.

Now, the toll records on Weinberg's telephone show that he made a call to your house at 8:53 p.m., on March 31st. The call lasted approximately 4 minutes.

Were you home at 8:53 p.m., on the night of March 31st, which is the date that MacDonald—of the MacDonald transaction?

Mr. **Errichetti**. I would think so. I do not know the time frame, you know, meaning time of night.

Mr. **Wheeler**. Approximately 9 o'clock that night?

Mr. **Errichetti**. Probably.

Mr. **Wheeler**. Do you recall that you received a telephone call from Weinberg?

Mr. **Errichetti**. I definitely received a phone call. Whether it was 9 o'clock or 8:30, I do not know the time, but I distinctly remembered relating to you what I did to him, meaning in regards for the benefit of Margo Kennedy, who was going to report back to the sheik that everything went hunky-dory and she can relate to the sheik that the transaction was carried off and they are now in the casino business.

Mr. **Wheeler**. Weinberg's toll records also show that he called you on April 1st at approximately 4:30 in the afternoon. Do you recall that telephone conversation?

Mr. **Errichetti**. Well, was it a minute, 30 seconds——

Mr. **Wheeler**. No. That is the one—the very, very brief one is the one that allegedly occurred at 2:30 that was not [138] really a telephone call.

Mr. **Errichetti**. No. That is——

Mr. **Wheeler**. That is the one that would have placed you some place else.

Mr. **Errichetti**. Yes, placed me home when I was alongside of him.

Mr. **Wheeler**. Right. But the toll records do reflect a telephone call of several minutes' duration at approximately 4:30 that afternoon.

Did you talk to him again on the 1st after you got back from having given him the briefcase?

Mr. **Errichetti**. I may have. I do not know. Was there a tape to that effect?

Mr. **Wheeler**. Well——

Mr. **Errichetti**. Is there a tape to that for whatever it is time of day?

Mr. **Wheeler**. The tape—what the tape suggests is that there was a call placed at 2:30 p.m., on April 1.

Mr. **Errichetti**. I am aware of that preamble.

Mr. **Wheeler**. And there is a conversation that immediately follows that preamble, all right? And it appears that at least the version of the way this was constructed is that the preamble was made at sometime on or about 2:30 or perhaps even earlier than that, but that the call, of which there is [139] a tape, actually heard at 4:30 p.m., approximately 4:30 p.m., that afternoon.

Mr. **Errichetti**. Is there a tape to that effect, sir?

Mr. **Wheeler**. Yes.

Mr. ERRICHETTI. What does it say?

Mr. WHEELER. The tape is the kind of conversation you have just described that occurred on the night of March 31st.

[140] Mr. ERRICHETTI. Why would I make that conversation at 4:30 in the afternoon and said everybody's happy, you got the money? I made it the night before. Now, he may have used a public phone the night before, too. I don't know where he maybe is calling from. He doesn't have to be from his home. It could be anywhere.

Mr. WHEELER. The kind of language you used, Mayor Errichetti, and the conversation that is on that tape is markedly different from the kind of language that you used in all of the other conversations in which you are recorded. Do you understand what I am saying?

Mr. ERRICHETTI. My wife was sitting—my wife was sitting in the next room. I was trying to keep my voice down and not be my—be the other human being coming out. I don't believe she heard a word I said because I was speaking slowly and softly and trying to get my point across without the cussing and the other screaming.

Mr. WHEELER. It wasn't because Margo Kennedy—because in your mind Margo Kennedy was on the other end?

Mr. ERRICHETTI. Absolutely, absolutely she was on the other end of the phone. I mean, I believe that she was on the other end of the line.

Mr. WHEELER. In the tape of—that purports to be a tape of April 1, Mayor Errichetti, Weinberg says: [141]

> I really feel bad for, I really mean it, I feel bad for what happened, but think I got it straightened out.
>
> ERRICHETTI. Well, that's the beauty part. You make a mistake and you cover it, and it's done in a professional fashion, which could happen. It's the end result that would count, and I think that we're in good shape.
>
> WEINBERG: That's the reason I didn't call you yesterday. I figure you must have had your hands full with him.

Mr. ERRICHETTI. That's a coverup that he's using to use the words to substantiate the preamble of the previous conversation. Very, very bright guy.

Mr. WHEELER. Immediately after he said: "I figure you must have had your hands full with him," he said: "That's the reason I didn't call you yesterday; I figure you must have had your hands full with him," Errichetti laughs.

Is that why you were laughing?

Mr. ERRICHETTI. Yes, because it was done the day before.

Mr. WHEELER. Do you recall what the conversation on April 1 was about, the one in the late afternoon of April 1?

Mr. ERRICHETTI. The one that's other than me giving a speech about MacDonald?

Mr. WHEELER. Right.

Mr. ERRICHETTI. No, I do not.

Mr. WHEELER. You said that on April 1 your nephew [142] drove you up to Long Island, is that right?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And who did you meet?

Mr. ERRICHETTI. April 1?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. Weinberg.

Mr. **Wheeler**. Was he alone?
Mr. **Errichetti**. Yes.
Mr. **Wheeler**. He drove himself?
Mr. **Errichetti**. He was by himself.
Mr. **Wheeler**. Do you remember what car he drove?
Mr. **Errichetti**. Lincoln.
Mr. **Wheeler**. Did you get into the car with him?
Mr. **Errichetti**. Yes, sir.
Mr. **Wheeler**. And you handed him the briefcase?
Mr. **Errichetti**. I put it in the back seat.
Mr. **Wheeler**. What time of day was that?
Mr. **Errichetti**. Early afternoon.
Mr. **Wheeler**. What time did you get home?
Mr. **Errichetti**. I wasn't keeping track of time. I don't know. I'm sure late in the afternoon. It takes two and a half hours to go back from there. It only lasted 10 minutes, 15 minutes at the most with him.
Mr. **Wheeler**. What did you do with the $37,500 that you kept?
[143] Mr. **Errichetti**. Excuse me?
Mr. **Wheeler**. What did you do with the $37,500 you kept?
Mr. **Errichetti**. I spent it.
Mr. **Neal**. On what?
Mr. **Errichetti**. Many things.
Mr. **Neal**. Give us some.
Mr. **Errichetti**. Frivously. Casino control—casinos. Bought turkeys for people on Thanksgiving. Bought people turkeys for Christmas. I squandered it, sir. Squandered the money.
Mr. **Wheeler**. Did there come a time when you bought a $16,000 car in cash for your wife or daughter?
Mr. **Errichetti**. No, sir. The mortgage company, the bank has it. Did I buy a car? Yes, the records are the bank is a partner.
Mr. **Wheeler**. On March 30, when you met with Mr. Weinberg, you handed him a handwritten list of a number of politicans, did you not?
Mr. **Errichetti**. Was that the day before or day during?
Mr. **Wheeler**. The day before.
Mr. **Errichetti**. I'm not sure what day. It may have been the day of.
Mr. **Wheeler**. The day of the MacDonald meeting you gave him a picture book of New Jersey legislators.
Mr. **Errichetti**. Yes.
[144] Mr. **Wheeler**. But the day before, you gave him a handwritten list of eight individuals, didn't you?
Mr. **Errichetti**. I may have. I am not sure.
[145] Mr. **Wheeler**. The handwritten list contained the names of six State politicians and the names of Ozzie Myers——
Mr. **Errichetti**. Yes.
Mr. **Wheeler**. —and Congressman [deleted].
Mr. **Errichetti**. I believe you are correct, yes.
Mr. **Wheeler**. Why did you give Weinberg that list on March 30?
Mr. **Errichetti**. Why did I give it to him?
Mr. **Wheeler**. Yes. If you were there to talk about setting up the logistics for the Kenneth MacDonald meeting the next day——

Mr. ERRICHETTI. See, in that time frame—I am not going to be tied down to which time of day it was or what month it was. Weinberg explicitly said just been approved for one million dollars, OK, for the sheik to buy friends. And he gave me the speech very simply of the criteria, meaning they had to do nothing, just come in, be a friend, it's a gift, pay the taxes that they would pay on, the conditions being this $100,000 per Congressman or Senator, $50,000 has to be told to the recipient has to go back, meaning back with me to share with Mr. DeVito and Mr. Weinberg. OK. He said: "is there any potential candidates that you think may be amenable to that kind of a friendship basis with the sheik?" And I wrote some names down. Now, whether they—and I never—well, I didn't approach any of them because I didn't know 'em basically.

[146] Mr. WHEELER. When you——

Mr. ERRICHETTI. The ones I wrote down and the ones I checked off.

[147] Mr. WHEELER. When did he tell you about this one million dollars?

Mr. ERRICHETTI. In that time frame, sir.

Mr. WHEELER. Before March 30, 1979?

Mr. ERRICHETTI. I'm almost certain.

Mr. WHEELER. And he said to you for Congressmen or Senators?

Mr. ERRICHETTI. Yes, and less for assemblymen and less for State senators.

Mr. WHEELER. He also included State legislators then?

Mr. ERRICHETTI. Yes, sir. I think it was 25 for State senators and I think 10 for assemblymen. I think that was the schedule.

Mr. WHEELER. How did you choose the names to write down on March 30, those eight names?

Mr. ERRICHETTI. How did I choose?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. Guesstimate.

Mr. WHEELER. Well, how did you come up with——

Mr. ERRICHETTI. What names, to begin with? I don't even know what names were——

Mr. WHEELER. There were six names of State legislators and then Myers and [deleted]. How did you pick Myers and [deleted]?

Mr. ERRICHETTI. Myers was, had that South Philly connotation, not because I knew it to be fact, but that was the rumor.

[148] He might have been amenable to a campaign contribution. The six people, I don't know who you're talking about, but I am sure that they were the sort of people that I thought I could approach on that basis.

Mr. WHEELER. But [deleted] was also the person you said was supposed to go up with Ellis on March 1?

Mr. ERRICHETTI. What's the discrepancy?

Mr. WHEELER. Well, it's not a discrepancy. In fact, I'm asking, Is that just a coincidence that [deleted] name came up twice in the same month in the Abscam contacts?

Mr. ERRICHETTI. It only came up because of [deleted] and he needing campaign contributions from reliable operations or people that wanted to make contributions. And that's the only reason why I put his name, not because I thought he was dishonest.

Mr. **Wheeler**. Did Weinberg tell you on March 30 to see what you could do about bringing [deleted] and Myers into the Abscam situation?

Mr. **Errichetti**. Anybody. Anyone. I'm sorry.

Mr. **Neal**. I have a couple of questions while we are on that. On that list you listed the [deleted].

Mr. **Errichetti**. I'm sorry, sir?

Mr. **Neal**. On that list marked [deleted].

[149] Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. What did you know about him that caused you to mark him?

Mr. **Errichetti**. The ones I was, in my mind, trying to see if I could approach to get a gift were the ones that I felt that lived, you know, decently, the ones that enjoyed the better things in life, the ones that I felt I could chat with without being offensive, sir.

Mr. **Neal**. Let me read these names: [deleted], State Senator [deleted], State Senator [deleted], State Senator [deleted], State Representative [deleted], State Representative [deleted], State Representative [deleted], State Representative [deleted], State Representative [deleted], State Representative [deleted], Commissioner [deleted], [deleted].

All those you had no basis other than you thought you could talk to them or give them the——

Mr. **Errichetti**. I felt I could. I did not, but I felt I could at that time.

Mr. **Neal**. Did you think they were corrupt?

Mr. **Errichetti**. No. I just thought that they liked to live high and liked to spend money.

Mr. **Neal**. You thought they might be corrupted?

Mr. **Errichetti**. Yes, I would think so.

Mr. **Neal**. Back at this March 31 thing, you had your [150] meeting on March 30, where you set up the scenario of, "how are you going to divide the money." Is that correct?

Mr. **Errichetti**. And the conversation with Margo Kennedy listening and his entree into the building and the key to his success, you know, the words that were going to be used by me, and that kind of thing; yes.

Mr. **Neal**. Then you came up on March 31, right?

Mr. **Errichetti**. To give him his share, yes, sir.

Mr. **Neal**. So, March 31, you came up to get the permission?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. From MacDonald?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. What time did you get back to your home on March 31?

Mr. **Errichetti**. Eight, 8:30. I am going to guess now. It was dark. And I got to guess. I know my wife had something to eat. My nephew and I had something to eat, either a sandwich or something. So, I guess it was like it was 7:30.

Mr. **Neal**. Before you left on the meeting of March 30, had you arranged all of your entire scenario of what was going to happen on March 31 and how, when, and where you were going to divide the money?

Mr. **Errichetti**. Yes, sir.

[151] Mr. Neal. Do you understand what I am saying?

Mr. Errichetti. Yes, sir.

Mr. Neal. All details were taken care of?

Mr. Errichetti. Yes, sir.

Mr. Neal. Well, there is a record of an unrecorded telephone call from Weinberg to Errichetti's residence at 8:53 p.m. on the night of March 30. Now, maybe I misunderstood something, but do you recollect the substance of that conversation? Were you in that conversation?

Mr. Errichetti. That night, now whether it was 8:53 or 9:53 or whatever night it was, I was on the phone telling him that everything went well, that MacDonald got his $75,000, that $25,000 was returned for me to return to DeVito so he can fix up the boat, and that everything went smoothly, and Margo Kennedy was listening on the phone, as I was told, so that she could report back to the sheik that everything went smoothly.

That is the conversation that I had in regard to the report.

Mr. Neal. Is that the telephone call in which they talked about the boat and the $25,000?

Mr. Errichetti. That MacDonald agreed to give the $25,000?

Mr. Neal. Right.

Mr. Errichetti. Yes. I don't know how long it was, but whatever it was, I told him.

Mr. Neal. And you're saying that that telephone call [152] then, if there is a transcript of a telephone call that says that, you are saying that occurred not on April 1 after you got back from——

Mr. Errichetti. Yes, sir.

Mr. Neal [continuing]. But the previous day?

Mr. Errichetti. Yes, sir. Previous night.

Mr. Neal. The previous night.

Mr. Errichetti. Yes, sir.

Mr. Neal. So, if we have a transcript that purports to be a telephone call April 1——

Mr. Errichetti. Yes, sir.

Mr. Neal [continuing]. That has that conversation on it.

Mr. Errichetti. It's false.

Mr. Neal. You are saying that that, in fact, occurred——

Mr. Errichetti. The night before.

Mr. Neal [continuing]. The night before?

Mr. Errichetti. Yes, sir.

Mr. Neal. That is the night of March 31, 1979?

Mr. Errichetti. Yes, sir. And the preamble of that particular tape is that he professes to be, that particular day I was there, either meeting with him at that instant or going back and forth; you know, either——

Mr. Neal. How do you explain the fact that there are toll records showing a call from Weinberg to Errichetti on the late afternoon of April 1? Did you talk to him after you got [153] back on April 1, after you got back from splitting the money?

Mr. Errichetti. If I talked to him, sir, it was not in regards to the disposition with MacDonald and Margo Kennedy listening on the phone.

That time of day you're mentioning, sir, is there a tape; and how long was that conversation?

Mr. **Neal**. Well, I guess the smart answer would be to say I'm asking the questions, but I don't know.

Mr. **Errichetti**. I'm not sure either, sir.

Mr. **Neal**. Well, the reason we don't know, sir, is because we have assumed, up to this point, that we have been told accurately and that the transcript of the conversation we have was, in fact, a conversation, not at 2:30, but, at some time on April 1. And you are saying, sir, that the conversation did not take place on April 1?

Mr. **Errichetti**. That is correct, sir.

Mr. **Neal**. It took place on the night of March 30?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. You seem pretty certain of it.

Mr. **Errichetti**. Absolutely.

Mr. **Neal**. Why are you so certain about that, of that date?

Mr. **Errichetti**. I can close my eyes and see myself telling the story.

Mr. **Neal**. March 31?

[154] Mr. **Errichetti**. Yes, sir. I had my elbow up on the door, as sure as God made apples, and I was relating to him exactly what happened for the benefit of Margo Kennedy. And it was Saturday night, not Sunday afternoon.

Mr. **Wheeler**. Mr. Errichetti, you have said to me on a couple of occasions today when we were off the record that the kind of language that you are shown using on these tapes is not indicative of the kind of language that you, in fact, normally used and that Weinberg had encouraged you to use profane language in order to impress McCloud and the other Abdul people with what a street-savvy guy you were. Is that right?

Mr. **Errichetti**. Malcolm, when I hear some of these tapes and I hear you quoting me, my stomach churns because, aside from the acts that we are talking about that I have been terribly sorry about, my daughter and my wife don't know me, I've never cussed in the house in 54 years, 32 married to her and years prior to that with my mom and dad. So, it was not conducive of me with that language. What I am sorry about is the stupidity that allowed myself to become programed and become corruptible.

Mr. **Wheeler**. What was it that Weinberg told you as to why you ought to use this kind of language?

Mr. **Errichetti**. I had to come on so emphatic that I had to be so impressive that I could do anything and everything. **[155]** Like, for instance, like the mob, OK; you gotta go in and you gotta tell 'em that you know the mob and you can get the labor problems done, and everything's gotta be done; you can do it all.

I said, "I don't know any damn mob."

Mr. **Wheeler**. What does the obscene language have to do with that?

Mr. **Errichetti**. I guess the connotation of one of being forceful, one of being a street guy, one that belongs to the rogues' gallery, for a better word; OK?

Mr. **Wheeler**. And the purpose of that was to impress——

Mr. **Errichetti**. Getting things done with your muscle and your strength and whatever.

Mr. **Wheeler**. The purpose of this was to impress McCloud with all that?

Mr. ERRICHETTI. I suspect.

Mr. WHEELER. Then, explain this to me, Mr. Errichetti. Following the March 31 meeting, in a conversation only with you and Weinberg, he pulls you aside. Weinberg says:

> Better get him home; he looks kind of nervous.

And you say:

> That fucking schmuck, I'll kill him.
>
> WEINBERG. Forget it.
>
> ERRICHETTI. Around here, jerk him off; I said to him, I said, hey, the money for our future, the fucking guy I have to draw a picture for the mother-fucker. The guy was always useless. This guy was so happy when I was coming in the car.

[156] Now, who were you trying to impress then?

Mr. ERRICHETTI. Myself, I guess.

Mr. WHEELER. Did you just get into this role?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. These are really indicative of conversations where McCloud wasn't present, Amoroso wasn't present. This is one from June 27, 1979.

> WEINBERG. He's scared.
>
> ERRICHETTI. [Referring to Senator Williams:] In other words, with Pete Williams. OK. When I went there, he didn't say two fucking words. I got Pete by the fucking throat. I tell you about as close as I came in his office. Let me tell you something, cock-sucker, don't you go fucking this thing up. I got a chance to make a fucking million dollars, you prick. All you're gonna do is give a fucking speech because you never got a license. Not much left to say. You're gonna to fucking guarantee that fucking contract. I said you're gonna fucking say it. I don't give a fuck. Never mind about doing it. You're gonna fucking say it.

This is talking to Weinberg in the presence of George Katz.

Mr. ERRICHETTI. Alex Feinberg wasn't there?

Mr. WHEELER. It doesn't look like it.

Mr. ERRICHETTI. In any event, whoever was there, I was getting caught up in the role of tough guy that can get things done. And, believe me, I did not talk to Senator Williams in [157] that fashion nor in that profanity.

Mr. WHEELER. You never did?

Mr. ERRICHETTI. No. Well, I may have screamed at him sometime but not in the sense that I'm grabbing anybody by the throat and hit him with a baseball bat and all that. That was all play-acting. But I got in the role, I guess.

Mr. NEAL. I might say that I can empathize. John Dean wrote a book called "Blind Ambition," and he had me using all of those terms. And at least at that time in my life I did not use them either; I learned later on.

Mr. WHEELER. Mr. Errichetti, again, in this handwritten list of March 30, it contained Congressman Myers and Congressman [deleted] names on it. Ultimately, on August 22, 1979, Congressman Myers, in fact, appeared and received payment.

Mr. ERRICHETTI. Not through my efforts, sir.

Mr. WHEELER. All right. What I want to know is, after you gave Weinberg the list on March 30, 1979, when was the next time that he or Tony DeVito mentioned Congressman Myers to you?

Mr. ERRICHETTI. They don't mention those names to me at all. You mean Weinberg and DeVito?

Mr. WHEELER. Either one of them.

Mr. ERRICHETTI. You mean, when they're going to come in?

Mr. WHEELER. Right.

Mr. **Errichetti**. To that effect?

[158] Mr. **Wheeler**. Right.

Mr. **Errichetti**. You have to understand, sir, that after the April conversation, while I was gallivanting up the east coast back and forth to Long Island, my mind being diverted and activity being diverted to other things, they ganged up on me, meaning they, the politicians. And I was not taking care of home. So, [deleted] and the rest of the county so-called leaders decided that they better knock me off my perch because I had been there too long and I had exercised political strength, and it was time to replace or change leadership. And he seemed to be the most vulnerable, he hasn't been around. And I became naturally deeply engrossed shortly thereafter with the filing dates and then all of May and June primary.

So, I think May I started slipping as far as trying to recoup some of my strengths so that I wouldn't get clobbered too badly and see if I could recoup the strength politically and be victorious in a primary election, which I was not. I survived the district where I live, meaning I was not running for office but the people I supported were victorious in the city of Camden and the surrounding area, the Fifth District of the State of New Jersey, legislative district. I lost the other two districts. So, I was knocked down a peg politically June 2d or 3d, whatever day it was.

So, you know, my political strength, ego wise, I would think, became diminished.

[159] Mr. **Wheeler**. But during this——

Mr. **Errichetti**. As I was trying to say to you, my mind was slowly diverting to the back-home politics and getting my house in order, trying to anyway, rather than getting involved up and down the pikes, as I was doing before.

Mr. **Wheeler**. All right, but during this time you did set up a meeting between Mr. [deleted] and the representatives from Abdul Enterprises, didn't you?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. Who asked you to do that?

Mr. **Errichetti**. I'm sorry?

Mr. **Wheeler**. Who asked you to do that?

Mr. **Errichetti**. Who asked me to do that?

Mr. **Wheeler**. Right.

Mr. **Errichetti**. They wanted to meet the [deleted] and they were prepared to give him $50,000 with $25,000 going back, the same arrangement as previously. And I said, "Well, all I can do is chat with 'em."

Mr. **Wheeler**. Let's back up and put some dates on this. Who was it who said that to you and when?

Mr. **Errichetti**. That may have been—the first contact, I think, may have been in March, meeting with [deleted]. And I am not really sure of the dates, so please don't you know, put me into that timeframe.

I tried to call him. He had to go to Florida or he had [160] to go to Puerto Rico. He was moving around quite a bit. He was not situated to the point where I could sit down and chat with him face to face. I finally did and related to him exactly the gift story, the fairy tale story, the Arabs, the sheiks, Abdul Enterprises, do nothing, and so forth.

I gave him the script. He said: "well, that doesn't sound bad. Not going to do anything?" "No. All they want to do is, how they say, hang on their wall, I guess, [deleted] friend, OK?" [161] He said, "Fine."

So I am not sure when we went, but I drove him up to Long Island, and we had this little meeting, were it was [deleted], me, and DeVito, and where I think it was jostling situation, where I think the envelope was there, and it was, like, DeVito going back and forth because he was not, I guess, saying the words that he was trying to extract from [deleted], and [deleted] was not to be led in, wordwise, as much as they wanted him to be. I thought it was satisfactory, naturally. They did not think, and they called me outside the room and said, "This guy is not saying anything."

I said, "Well, what the hell are you supposed to say? He is a [deleted]. What can you really do?"—meaning he is the [deleted]—— "Well, he has got to say more than that; otherwise, forget it."

So I said, "Well, forget it. He is not going to"—so he went home and left the money on the table.

Mr. WHEELER. All right, now, there is a tape——

Mr. NEAL. Excuse me just a minute, before you get off of that. Had you had a meeting with Weinberg like you had with them?

Mr. ERRICHETTI. Yes.

Mr. NEAL. You told us that on January the 19th, you had [162] a meeting between you and Weinberg, when you developed the scenario and plan with respect to the bribe to you and the next day.

Mr. ERRICHETTI. June 19th.

Mr. NEAL. January 19th.

Mr. ERRICHETTI. Oh, yes, yes.

Mr. NEAL. And then, we know that on March 30th, before the alleged bribe to MacDonald, you had another meeting with Weinberg in which you say that you made your plans and scenario and the sharing of that bribe money.

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. All right. Now, with [deleted], did you have a meeting with Weinberg prior to the [deleted] transactions?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. What, a meeting, the previous day, or——

Mr. ERRICHETTI. I am not sure if it was a day before, a week before, or whatever it was, but we did have a meeting to go over what I was told to say to [deleted] in regards to the scenario, and then, me meeting back and saying to him that he has agreed to the gifts, and——

Mr. NEAL. Were you going to do anything about sharing that bribe money?

Mr. ERRICHETTI. Oh, yes.

Mr. NEAL. What?

Mr. ERRICHETTI. We were to get $50,000 total, meaning [163] to [deleted], and [deleted] understood he was to give me $25,000 back; OK?

Mr. NEAL. So you are saying that [deleted] was going to give you $25,000?

Mr. ERRICHETTI. To share with DeVito and Weinberg, which I told him.

Mr. NEAL. So, if Mr. [deleted] was in Washington, Mr. [deleted] knew that he was going to get money for something?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. What did he think he was going to get money for?

Mr. ERRICHETTI. Making a speech.

Mr. NEAL. Making a speech. And he was going to give $25,000 back to you?

Mr. ERRICHETTI. Yes.

Mr. NEAL. And you and Weinberg had agreed to share that $25,000?

Mr. ERRICHETTI. And DeVito.

Mr. NEAL. Now, when you say, "And Devito," to be totally fair, DeVito never said that to you?

Mr. ERRICHETTI. Weinberg.

Mr. NEAL. OK. Weinberg is saying that part of it is going to DeVito?

Mr. ERRICHETTI. That is correct. [Conferring with counsel.]

[164] Mr. NEAL. Weinberg is saying part of it is going to DeVito?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. What is the speech that [deleted] was supposed to make?

Mr. ERRICHETTI. That he can move in regards to the legislative field, being he is a [deleted], and he is also, I think, [deleted] which is the [deleted], and that if we needed any legislation that was legal—nothing illegal—but legal, that he would represent them in regards to moving on their behalf to get things done, legally, lawfully, and legitimately, in that respect; also, that if they needed a check-cashing operation, Jersey City, or Camden, or Newark wherever it may be, that he would be very helpful in obtaining legally, again.

You see, these things that we are talking about can be done very easily. There is no big deal. There is a statute that says you put up $5,000, you open up a store, you put the various people in it. They made it, they wanted to pay somebody to give them the OK for something that can be done for nothing, meaning Weinberg.

So they said, "What are you, crazy? What is all this about a second-hand license, or a check-cashing? That can be done by Joe Blow. What do they need me for?"

He said, "What do they want from me?"

[165] I said, "They want a friend to be able to pick up the phone and say, 'OK, [deleted], we want a second-hand license'—or a check-cashing license, whatever it may be."

Mr. WHEELER. And your understanding—your understanding was that—because this is what Weinberg told you—was that you and DeVito and Weinberg were all going to share in this money?

Mr. ERRICHETTI. Absolutely.

Mr. WHEELER. All right. Let me read you from a transcript, Mr. Errichetti, of June 16, 1979. The participants are you, Ernie Poulos, Mel Weinberg, and Tony DeVito. Do you know who Ernie Poulos is?

Mr. ERRICHETTI. Yes.

Mr. Wheeler. Who is he?

Mr. Errichetti. What his real name is?

Mr. Wheeler. Yes.

Mr. Errichetti. Papadopoulos, a Greek name; that is all I know.

Mr. Wheeler. All right. And who did you think he was?

Mr. Errichetti. He was portrayed as a hanger-on, a broken-down gambler—by Weinberg, he was portrayed by.

Mr. Wheeler. All right. Here is how this transcript goes:

> Weinberg. Yeah, you want to get [deleted] straightened out, huh?
>
> DeVito. Yeah, well, all right. Well, we are going to bring him over. You are going to come over next week.
>
> [166] Weinberg. The 26th.

This is the 26th of June, incidentally.

> DeVito. The 26th? All right, we'll sit down. I'd like to just meet him, so he can get to feel, you know, all right.
>
> Errichetti. He'll be there. We'll sit down, the three of us.
>
> DeVito. All right.
>
> Errichetti. He'll tell you he's going to pledge them support, whatever, because they're [deleted].
>
> DeVito. And he can lay out what we have to do for the——
>
> Errichetti. License.
>
> DeVito [continuing]. For the license, and—yeah, I know that, but I mean, you know——
>
> Errichetti. Cooperation.
>
> DeVito. Yeah.
>
> Errichetti. You got the guy in your pocket. I have him in my pocket.

Mr. Errichetti. The license, you are referring to?

Mr. Wheeler. Well, you are saying to, who you say—in your mind, you believed that these people were in on this deal with you, and here you are, telling them, "You have got this guy in your pocket," and "He will guarantee you the [167] license.".

Mr. Errichetti. What's the discrepancy?

Mr. Neal. Let me recap.

Mr. Errichetti, you and I and Mr. Wheeler are in a conspiracy to rip off your lawyer, OK?

Mr. Errichetti. All right.

Mr. Neal. Now, if your lawyer is there, present, it might make some logic to go through a charade, OK? But if you and I and Mal are the only people there, why are we going through the charade, with each other, if we are all part of the conspiracy? Do you understand what I mean?

Mr. Errichetti. Yes, sir.

Mr. Neal. If you and Mr. DeVito and Mr. Weinberg are in a conspiracy to rip off the sheik and his crowd, why do you go through that dialog when you three are the only three present, for goodness' sake? Why don't you say—since you do not know it is being recorded—why don't you just say, "Hey, how is our conspiracy going?" for goodness' sake?

Mr. Errichetti. A good question, because I asked the same——

Mr. Neal. What is the answer?

Mr. Errichetti. I asked the same question.

Mr. Neal. Who did you ask it of?

Mr. Errichetti. Weinberg. I said, "Mel, what is all [168] this baloney, you know, me bringing these bodies all over the place, when I can bring in some guy off the street and make him play Joe Blow, or [deleted] or Pete Williams, or somebody?"

And he said, "Wait a minute, now, just a minute. You just cannot get to this point. You have to understand DeVito. DeVito, with all of the idiosyncrasies he has in regards to sharing, he has got to—in his own conscience, he has to be able to see the guy, and he has got to go through this, and he has got to be above it, so he can honestly and truthfully say to the sheik, 'Yes, [deleted] came in, and he said the following.' "

Mr. **Wheeler**. But Mr. Errichetti, this is before the meeting with [deleted].

Mr. **Errichetti**. I asked that question 3 months before that.

Mr. **Wheeler**. But do you understand what we are saying?

Mr. **Errichetti**. Mel said this——

Mr. **Wheeler**. What we are saying is, the meeting that I just read you a transcript of was not a meeting with [deleted] and it was not a meeting with McCarthy. It was just a meeting among the three alleged conspirators, and here you are, telling your two fellow conspirators——

Mr. **Errichetti**. Right.

Mr. **Wheeler** [continuing]. That you have got this guy in your [169] pocket. Well, why are you telling them that, when they are your co-conspirators?

Mr. **Errichetti**. Well, I do not know that it is being taped. They are playing for the tapes, and I am not.

Mr. **Wheeler**. But that is the whole point; you did not know that.

Mr. **Errichetti**. I did not know anything, except we were discussing, everything is all set. I am talking to them as fellow conspirators, that everything is set.

Mr. **Neal**. But you are acting as if this is real.

Mr. **Errichetti**. Sir?

Mr. **Neal**. No, no.

Mr. **Errichetti**. It is not real.

Mr. **Neal**. You are acting as if this is a real thing, that you are going to bribe Mr. [deleted] and that you have got him in your pocket.

Mr. **Errichetti**. Right.

Mr. **Neal**. Now you are telling us that all three of you know that this is simply a charade—do you understand what I am saying——

Mr. **Errichetti**. Yes.

Mr. **Neal** [continuing]. And that you all three are conspirators. I do not know how I can make my question any plainer than, as I say, if you are going to play-act when you have got a fourth party there who is not a part of the conspiracy, it makes sense [170] for you to play-act in front of him, that is, McCarthy, because he is the man who is the victim of your conspiracy.

But if only the three of you are together——

Mr. **Errichetti**. Wasn't Poulos in that meeting, too?

Mr. **Neal**. Who?

Mr. **Errichetti**. Poulos.

Mr. **Wheeler**. Yes.

Mr. **Neal**. Were you doing that for him?

Mr. **Errichetti**. I don't know. They are playing along, not me. I am giving my speech. They are the ones that are playing.

Mr. **Neal**. But there are other conversations. Mr. Wheeler is just reading one. There are other conversations when nobody else is there but the very people you say are members of this conspiracy, and yet you go through the same show as if McCarthy was there. Why?

Mr. **Errichetti**. I do not know. I am just caught up in this thing with those people, and it was just a commonplace that we discussed it. Now, whether they were—I cannot explain it.

Mr. **Wheeler**. What about this one, Mr. Errichetti. The same transaction—now, it is just you and Weinberg, you are the only two people talking, no one else, no DeVito, no Poulos, no nobody, just you and Weinberg.

> **Errichetti**. [deleted], OK, he is all set. [171] Now, I got to see him tomorrow. What was the number, 50?
>
> **Weinberg**. Right.
>
> **Errichetti**. Twenty-five and twenty-five?
>
> **Weinberg**. Right.
>
> **Errichetti**. Twenty-five for you and me—I mean, 25 you, and 25 for him.
>
> **Weinberg**. Right.
>
> **Errichetti**. OK, I'll set it up.
>
> **Weinberg**. OK.

Now, it is just you and Weinberg talking, and there is no discussion here about money going back to DeVito——

Mr. **Errichetti**. What is Weinberg going to say, "Yes, I am going to get 25"? Weinberg is playing Mr.—with the white hat.

Mr. **Wheeler**. But you are talking, and you do not know this is taped.

Mr. **Errichetti**. I know that. They know.

Mr. **Wheeler**. And you are the one who says, "Twenty-five for you and me—I mean, 25 you, and 25 for him."

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. "Twenty-five you" means 25 Weinberg; [deleted]. "Twenty-five him" must mean 25 [deleted].

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. Well, that is not the same deal that you just testified to. The deal you testified to was 25 to [deleted], [172] and the other 25 comes back to you, DeVito, and Weinberg.

Mr. **Errichetti**. Mel was the holder of the keys. Now, he represented DeVito. I have to assume that he was; whether he wasn't or not, I don't know. I am involved, and Mel is involved, period.

Mr. **Wheeler**. Now, other than [deleted] both in the hand-written list of March 30 and in the checkmarks by all the pictures in the picture book on March 31, there were a host of other State legislators you had indicated you could bring into the picture on behalf of Abdul Enterprises. Did they ever go to you and say, pursue any of those people?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Did you ever make any effort to bring any of those people to Abdul Enterprises?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. All right. July 26, 1979, you went down to Florida, didn't you, and went on a yacht called "The Left Hand"?

Mr. **Errichetti**. July?

Mr. **Wheeler**. Yes.

Mr. **Errichetti**. Along with others, yes.

Mr. WHEELER. Right. Do you recall being onboard "The Left Hand" when the yacht turned up the Intercoastal Waterway, and your having a conversation with Weinberg, Criden, and Amoroso about Somoza?

[173] Mr. ERRICHETTI. The truth of that particular boat ride, up on the top deck, I can just tell you truthfully as to my participation and what I heard and what I did not hear. One, I took a nap on the boat. The only time I heard "Somoza" from either Tony or the guy that was steering the boat, was, "That's where Somoza lives," pointing, and we looked, like that, and I laid down. There was no other conversation that I remember me, offering, or suggesting, and/or being told that there was an immigration problem, because if that were the case, on the plane ride back—now, I did not have an opportunity to talk about logistics with all those people present, is that correct—was from that boat, when it docked, we immediately went to get the plane—me, Criden, I guess it was Johanson, and a fellow named James Meiler, I think, if I can remember his name correctly. And that is when I said to Mr. Criden, "Do you want to hear a fairytale about the $1 million, about Congressmen?" and whatever-have-you. That is when he said, "Oh, my God, a gift?"

"Uh-huh," and I gave him the scenario that was given to me.

It was not given to me that day, this Congress bit. It was given before then. Like I mentioned earlier in this conversation, where Weinberg had said, "Hey, we have just been allocated $1 million. Tony got the OK to get rid of $1 million—half a million for us, half a million for the [174] Senators or Congressmen," whoever it may be.

Mr. NEAL. Now, did he say "Senators or Congressmen," or did he say "politicians"?

Mr. ERRICHETTI. I think Weinberg said "Senators". He said "Congressmen". I know that for a fact.

Mr. NEAL. Now, you are saying this occurred on, as I remember, March 31, or 30?

Mr. ERRICHETTI. Or before.

Mr. NEAL. But at least by March 30, 31, he said he got the million dollars?

Mr. ERRICHETTI. Yes, sir, in my judgment, yes.

Mr. NEAL. And you are saying you heard nothing about this asylum scenario, as it has been called, on the boat trip?

Mr. ERRICHETTI. There was chatter, there was talking. As I said, I was napping, and I got up, and all I heard about Somozo was, "There's where he lives."

Now, if I said what they are saying I said, I do not remember saying it, honestly and truthfully.

Mr. WHEELER. Did there ever come a time when Tony Amoroso, Tony DeVito, as opposed to Weinberg, said to you—irrespective of whether anyone else was present—that the sheiks are concerned that they might have to be able to get into the United States if there is trouble in their own country?

Mr. ERRICHETTI. Saying to me?

Mr. WHEELER. Right. Did DeVito ever say that to you?

[175] Mr. ERRICHETTI. He might have. I mean, again, I am not going to sit here and say "Yes" or "No" to that, because there are

so damn many conversations that I could not honestly sit here and say to you that he did or did not. He may have.

Mr. WHEELER. You do not recall that he did. You just do not remember one way or the other?

Mr. ERRICHETTI. I just do not remember, sir.

Mr. WHEELER. Do you recall ever hearing DeVito say that to anyone else in your hearing, that the sheiks were concerned that they might need to get asylum in the United States at some point in the future?

Mr. ERRICHETTI. Well, I think he said it to Myers when Myers was—I think—that tape that he was telling Myers and/or Lederer and others that there could have been a problem, and he was looking for their help. I think that is where I heard it.

Mr. WHEELER. But at no time before that did you hear DeVito say that?

Mr. ERRICHETTI. I do not recall, sir. Maybe—now, again, I am not to, even if he did. But who he did it to or who he said it to, I cannot honestly sit here and say to you, "Yes, he told Joe Blow, or me, or whoever." I do not recall.

Mr. WHEELER. Now, when you gave Weinberg the handwritten list on March 30, 1979—I am coming back to this one more time—it included Ozzie Myers' name on it?

[176] Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. On July 26, when you talked to Criden and told him about this fairytale, the first name he came back to you with was Ozzie Myers, wasn't it?

Mr. ERRICHETTI. Uh-huh.

Mr. WHEELER. And it is your testimony that that was——

Mr. ERRICHETTI. That was not at my suggestion, sir.

Mr. WHEELER. Excuse me?

Mr. ERRICHETTI. Not at my suggestion.

Mr. WHEELER. Yes. Is it your testimony that was purely a coincidence?

Mr. ERRICHETTI. Yes, sir. I do not think Criden even knew who he was. I think Johanson knew him—I think.

Mr. WHEELER. Did you tell Howard Criden before the August 22 meeting with Representative Myers, what was going to happen at that meeting?

Mr. ERRICHETTI. Oh, yes.

Mr. WHEELER. What did you tell Criden?

Mr. ERRICHETTI. The script?

Mr. WHEELER. Yes.

Mr. ERRICHETTI. Oh, yes.

Mr. WHEELER. What did you tell him?

Mr. ERRICHETTI. That Ozzie Myers was—if he was the person—he had to peruse with him, that he had to give a speech, that he could, again—that basically, it was one of [177] going to sit with the Abdul Industry people, who were looking for friends, and that he had to do nothing, and that basically, I could, truthfully and from the words of the skeik himself telling me explicitly the details to Myers, versus it being portrayed third-hand, meaning for Criden to say, "Oh, yes, you can do this." Well, Errichetti told him. "OK, let Errichetti tell me what has to be done, exactly." And I did, and I think that is the message he told Johanson, and Johanson told

Myers, or whatever, and I met Myers at the airport a short time before the meeting—like, if the meeting was 12 o'clock, I think I met him at 11:30, 11:15, 11 o'clock, some timeframe like that, and gave him the script that was presented to me by Weinberg that would be acceptable to Mr. DeVito, in this case.

Mr. **Wheeler**. And did that script include Myers stating that if the sheiks needed asylum in the United States, he could help them out?

Mr. **Errichetti**. I'd say yes.

Mr. **Wheeler**. When did you get that script?

Mr. **Errichetti**. When did I get that script?

Mr. **Wheeler**. Right.

Mr. **Errichetti**. That script was approved after I had told Weinberg that there was a possibility of seven or eight Congressmen coming in, by the fact that Criden told me that he knew two people in [deleted], one in [deleted], one in—wherever. **[178]** And I said, "Oh, my God, he's got two in [deleted], two in [deleted]—wherever." There was a list of—like, [deleted] and—the names that were given to me by Criden, I, on the phone, told him, he said, "We have got to sit down and talk." And we did, and he gave me the script as to what was expected of them, all bullshit excuse my language, but that is what was said. The script had to be one of you could talk about anything you want, but you want to be there to help the skeik; if a problem arises, it is no problem for him to enter legislation on his behalf.

Mr. **Wheeler**. All right, Now, you said a few minutes ago, Mr. Errichetti, that on and before July 26, 1979, you had never heard that scenario before, about the sheiks possibly needing some help and getting asylum in the United States; isn't that right? Isn't that what you testified to?

Mr. **Errichetti**. That does not have anything to do with what I am saying. I am telling you what Weinberg is telling me.

Mr. **Wheeler**. All right, let me take it through, let me make sure I understand what you are saying. Is it correct that before July 26, 1979, you had never heard anyone say to you that the sheiks might be concerned about needing asylum in the United States and needing help from politicians at some point?

Mr. **Errichetti**. Well, now, when you say "before July 26," he may have mentioned it to me, like, July the 14th——

[179] Mr. **Wheeler**. He, Weinberg, might have mentioned that to you?

Mr. **Errichetti**. Yes, sir—well, yes, because of the fact of the friendship of the sheik that was looking for friends. A Congressman had to present legislation that would keep a person here, because they could do it in the district.

Mr. **Wheeler**. So, what you are saying is that not only on or before March 30, 1979 did Weinberg tell you that they were looking for Congressmen, but he gave you a scenario to use in looking for them; is that right?

Mr. **Errichetti**. No. The first speech was he had a million dollars for Congressmen, with—it was all bullshit—but there were no specifics in regard to green cards or those kinds of things, do you understand? It was one of it has been allocated, it has been authorized, and we have to get him in. Now, he did not say to me they have got to come in because they have to get a green card, or Somoza, or those kinds of things, OK?

Mr. **Wheeler**. Right.

Mr. **Errichetti**. At a later date, I just represented to Criden what was told to me by Mel in regards to the million dollars, and that they were giving $50,000 as gifts as long as they paid their taxes; they are looking for friends, and what is required, I do not know yet.

They relayed that speech, and I would fill them in on [180] exactly what had to be done after I learned from whoever what had to be done exactly.

Mr. **Wheeler**. So, when was the first time when you heard the so-called asylum scenario, namely, that in helping to get Congressmen, one thing you could tell them was that the sheiks might need help in getting asylum in the United States at some point?

Mr. **Errichetti**. Mr. Counsel, it had to be before the boat trip the 26th of July. Now, when it was, I do not know.

Mr. **Wheeler**. But it was not before March 30, 1979?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. And it was not before March 31, 1979?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. Why do you say it had to be before the boat trip on July 26, 1979?

Mr. **Errichetti**. Because I am relating to Criden on the way back on the airline the script, basically.

Mr. **Wheeler**. You gave Criden that script on the airplane going back?

Mr. **Errichetti**. Basically, yes.

Mr. **Wheeler**. Well, not "basically." Did you tell him that that would be the script, that the sheiks might need help with getting asylum from Congressmen sometime?

Mr. **Errichetti**. Well, it was not asylum. It was people that either had to work—because they were trying to [181] establish businesses in districts, so that the people who had to come over for work could get a green card or whatever. It was none of this asylum business.

Mr. **Wheeler**. Residency?

Mr. **Errichetti**. Excuse me?

Mr. **Wheeler**. Residency, access to the country?

Mr. **Errichetti**. Yes, that is basically the speech, yes.

Mr. **Wheeler**. And you told Criden that on the 26th?

Mr. **Errichetti**. I believe so.

Mr. **Wheeler**. That is why you know you heard it sometime before then?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. But also, you are equally sure that you did not hear it for the first time on the yacht?

Mr. **Errichetti**. I do not think so; I really do not think so.

Mr. **Wheeler**. But you could have?

Mr. **Errichetti**. Well, there is always that possibility, but you know, I do not think so. Maybe it did——

Mr. **Wheeler**. That could have been the first time you ever heard it was on July 26, on the yacht?

Mr. ERRICHETTI. Again, I cannot sit here and say yes, it did occur, and that speech on top of the boat was true or false. I cannot say that. I do not remember.

Senator HUDDLESTON. Can I ask a question or two about [182] the boat ride? Do you recall how long that boat ride was?

Mr. ERRICHETTI. I know it had to be a short trip, because we had a plane that we had to meet in the early afternoon to get back to Philadelphia.

Mr. FURST. Excuse me, Senator. You are referring specifically to the boat ride, as opposed to the entire time they were on the boat on that date?

Senator HUDDLESTON. Well, yes, on the boat, the entire time on the boat.

Mr. FURST. That is different.

Mr. ERRICHETTI. Oh, I am sorry. OK. I think it was like 4 hours. I think there was dockside for, like, 3, 3½.

Senator HUDDLESTON. And when did you take your nap?

Mr. ERRICHETTI. When we pulled out for the little ride upstream or downstream.

Senator HUDDLESTON. So how much time, then, was devoted to actually cruising?

Mr. ERRICHETTI. The maximum, I would say, was an hour.

Senator HUDDLESTON. Less than half the time?

Mr. ERRICHETTI. Oh, yes, sir.

Senator HUDDLESTON. And during the course of that ride, how long did you sleep, do you know?

Mr. ERRICHETTI. I napped, you know—I guess maybe just trying to get a little suntan or something, but just laying in [183] the sun.

Senator HUDDLESTON. But were you napping in the presence of other people, or did you go into a stateroom or something?

Mr. ERRICHETTI. Oh, no. I was on top deck in, what do they call them, lounge chairs?

Senator HUDDLESTON. Sure.

Mr. ERRICHETTI. Yes, sir.

Senator HUDDLESTON. Then, during the course of this boat ride, did you have any conversation with DeVito privately, just the two of you sitting together?

Mr. ERRICHETTI. No, sir.

Senator HUDDLESTON. None at all?

Mr. ERRICHETTI. No, sir.

Senator HUDDLESTON. Did you have a private conversation with anybody else, just the two of you, sitting together?

Mr. ERRICHETTI. No, sir, because everybody had gone from the bottom deck all up to the top deck, and there were, like, five or six people, whatever it was.

Senator HUDDLESTON. So that if DeVito had approached you with this scenario and inquired as to whether or not you knew of anyone who might be susceptible to that kind of approach, the asylum scenario, other people would have been in a position to have heard it at the same time?

Mr. ERRICHETTI. I think so, Senator.

Senator HUDDLESTON. At any time during your association [184] with DeVito, did he ever suggest to you this need of the sheiks and ask for any specific help?

Mr. ERRICHETTI. I do not think so, Senator.

Senator HUDDLESTON. You do not think it ever came from Amoroso or DeVito?

Mr. ERRICHETTI. No, I do not think so, Senator.

Senator HUDDLESTON. Only Weinberg; was Weinberg the only person?

Mr. ERRICHETTI. Yes, sir, because basically, the only time I heard the scenario of they needing help was on videotape when the person was sitting there. I think that is when—is that correct—when Congressman Myers or whoever was in the room, he set it up—I think that is where I saw it, I mean, from the mouth of DeVito.

Senator HUDDLESTON. At any time in his conversation about this particular operation, did he ever suggest to you any criteria that would be used on politicians or Congressmen, specifically, that you ought to deal only with those that you had reason to believe would be receptive to this kind of proposal?

Mr. ERRICHETTI. Yes, sir.

Senator HUDDLESTON. Did he ever question anybody whose name you presented to him as to whether or not he was in fact a person that might enter into this kind of an agreement?

Mr. ERRICHETTI. I am sorry, Senator. Would you repeat [185] that, please?

Senator HUDDLESTON. Did he ever question any name that you submitted to him, ask you whether or not you were sure that this was a fellow who might be receptive to this kind of deal?

Mr. ERRICHETTI. He never questioned me, no.

Senator HUDDLESTON. He never did.

How many did you actually bring in for confrontations with Weinberg and DeVito?

Mr. ERRICHETTI. Before the cameras, sir?

Senator HUDDLESTON. Yes—well, before or not before the cameras——

Mr. ERRICHETTI. Well, Myers and Lederer, sir.

Senator HUDDLESTON. Those two?

Mr. NEAL. What about——

Mr. ERRICHETTI. Well, he is saying Congressmen.

Senator HUDDLESTON. Well, I meant—I meant Congressmen, actually, but you did bring other officials in.

Mr. ERRICHETTI. Yes. There was Senator Williams, the two Congressmen I just mentioned.

Senator HUDDLESTON. Now, Senator Williams was not brought in on this kind of a proposition, though; is that right?

Mr. ERRICHETTI. That is right. This was completely new.

Senator HUDDLESTON. Something—a different——

[186] Mr. ERRICHETTI. A different concoction, yes, sir. [deleted]; a fellow named Ellis Cook, alias "Nopo" or "Mopo" or whatever; Ken MacDonald.

Mr. WHEELER. Alexandro?

Mr. ERRICHETTI. Who?

Mr. WHEELER. Alexandro?

Mr. ERRICHETTI. No, sir.

Senator HUDDLESTON. Were you aware at the time, or have you learned anything since then that would lead you to believe that there was any kind of a follow-up check by Weinberg or DeVito on those individuals that you suggested before they actually made an offer to them?

Mr. ERRICHETTI. The only person who came in who was a ringer, and they caught it—meaning he was sitting there, and he was not the person that was represented——

Senator HUDDLESTON. The immigration official?

Mr. ERRICHETTI [continuing]. Yes—that was the only person.

Senator HUDDLESTON. I am talking about—well, that would have been a public official.

Mr. ERRICHETTI. All other sir, no questions asked.

Senator HUDDLESTON. No questions were ever asked as far as you know as to whether or not these people were people that might be inclined toward this kind of an operation?

Mr. ERRICHETTI. Neither a mention; it was never said, "Are you crazy?" or those kinds of things—never, no.

[187] Senator HUDDLESTON. Were you instructed to make sure that these individuals knew that they were going into a situation where they would be compromised, would be asked to do something for pay which would be in violation of——

Mr. ERRICHETTI. Just the opposite, sir. I was told they would do nothing, and would be expected to do nothing, and that there was a gift, and they had to pay taxes.

Senator HUDDLESTON. And was this what you relayed to those individuals?

Mr. ERRICHETTI. Yes, sir, among other things, you know—listen, whatever you want to say, tell them what they want to hear, and it is all baloney, and it is all play-acting—that speech, yes, sir.

Senator HUDDLESTON. Is it your belief that these individuals came, believing they were not going to enter into an illegal act?

Mr. ERRICHETTI. My heart says that they believed that they were going to get $25,000 or $50,000 or whatever it may be, and expected to do nothing for it—as long as they were going to pay taxes on it, whatever, as a gift. That is my honest belief of these gentlemen—Lederer and Myers.

Senator HUDDLESTON. And you are certain that DeVito himself was not the person who first revealed this opportunity to you and suggested that you see if you could find somebody who could be helpful to the sheiks if they needed this kind [188] of service?

Mr. ERRICHETTI. You see, everything, sir, was always generated by Weinberg, I think for a reason, so he could be—not for me, sitting here, saying, "Yes, he told me," versus Weinberg. So it was always the connotation of Weinberg doing all of the script-writing and arrangements and whatever.

Senator HUDDLESTON. Now, are you certain that this was not initiated by you, that it was Weinberg who made the suggestion that you prime some public officials, including Congressmen, who could be helpful?

Mr. ERRICHETTI. Well, sir, unequivocally, it was suggested by them, because they had the money to give, not I, and they had the motives to do so, not I.

Senator HUDDLESTON. Thank you.

Mr. WHEELER. Mr. Errichetti, I want to read to you the way Mr. Criden testified in "in camera" testimony under oath, and ask you if this accurately summarizes what Weinberg told you.

> Question. Did Mr. Weinberg ever tell you directly whether these officials would be called upon to perform?
>
> Answer by Mr. Criden. Well, specifically, he said to me they would probably never be called upon to perform to do anything. It was all, as he said, all B.S. and that they should all come on strong, agree to anything that was proposed to them, and probably never see them again.

[189] Mr. ERRICHETTI. True, plus the gift, wanted to be friends, plus pay taxes.

Mr. WHEELER. All right. Now, Mr. Errichetti, in the course of that answer by Mr. Criden—and you said that is what Mr. Weinberg also told you—I want to emphasize two words——

Mr. ERRICHETTI. More so with me than him.

Mr. WHEELER. All right.

Mr. ERRICHETTI. He comes to me, basically, and I am saying yes.

Mr. WHEELER. Right. I am going to read this again, and I am going to emphasize two words. I want you to listen carefully.

"Well, specifically, he, Weinberg, said to me they would probably never be called upon to perform to do anything, agree to anything that was proposed to them and probably never see them again."

Mr. ERRICHETTI. Are you zeroing in on the word, "probably"?

Mr. WHEELER. Isn't it a fact, Mr. Errichetti, that what Weinberg was really telling you was that the odds of another shah of Iran incident occurring were miniscule, and that they were, in fact, expecting a promise from these Congressmen, and if it should come to pass—low probability, but if it should come to pass—they certainly expected these Congressmen to perform?

[190] Mr. ERRICHETTI. Absolutely not, and I will tell you what the story was. When this became a problem, the shah of Iran was kicked out, is that correct, and we, this country, by newspaper accounts, particularly, were scared to death to handle him for fear of whatever reasons, nationwide and national problems. So he was shipped around to whatever country, Mexico, whatever. The fact was that these Congressmen that were about to be coming in, and would probably never be seen again, or probably never be asked of, because the sheiks already had their minds made up to go to South America and not even here, because they felt they could get better treatment and, with their wealth, be handled and treated in a much more fashion than this country.

That is the reason I am saying what you are saying, you know, meaning——

Mr. WHEELER. That is not inconsistent, though, with saying, "probably," is it, Mr. Errichetti? In other words, just because the sheiks currently intend—would prefer to—go to South America does not mean that if they had problems down there, what they were not looking for was protection to be able to get into the United States if they should have problems down there.

Mr. ERRICHETTI. I am just saying what Weinberg told me——

Mr. WHEELER. I know.

Mr. ERRICHETTI.—they are not coming to this country.

[191] They are going to South America. It was all bull, B.S.

Mr. Wheeler. Well, let me ask you this. If, 2 years later, 2 years after August 22, 1979, Weinberg had said to you, "Angie, call Congressman Myers, and tell him that the sheiks need to come to the United States, they need to call in those chips." Would you have called Myers?

Mr. Errichetti. We would not be sitting here if that were the truth. We would not be sitting here.

Mr. Wheeler. You did not think that you would call Myers?

Mr. Errichetti. Absolutely not.

Mr. Wheeler. And you did not think that Myers thought that he might receive such a call?

Mr. Errichetti. Speaking for him, which I cannot, but I would think he would not.

Mr. Wheeler. Did you tell Myers, incidentally, that the reason that you wanted to introduce him to the sheiks' representatives was because they wanted to meet Congressmen, that that was what they wanted, was to meet Congressmen?

Mr. Errichetti. Yes.

Mr. Wheeler. Excuse me. [Conferring with staff.]

Mr. Neal. While he is conferring, Mr. Errichetti, did Mr. Weinberg ever suggest the name to your knowledge of a politician, public official, who had not been first mentioned by somebody else?

[192] Mr. Errichetti. He said that they had Billy Carter, and that they had given Billy Carter a $500,000 loan, quote, "to that drunk," and he was at that time drying out somewhere, and he was coming back for $500,000 more. Now, whether that was——

Mr. Neal. Let me refine the question. Did he ever suggest a target to you—I do not mean this crudely—did he ever suggest, "We want to talk to Congressman so-and-so," and that name he gave to you was a name that had not been first presented by you?

Mr. Errichetti. Well, I may take a little time to answer that question, but I will try to answer it, and——

Mr. Neal. Can't you just answer it "Yes" or "No"?

Mr. Errichetti. Well, I am not sure whether it is a "Yes" or "No" for what you want to hear.

Mr. Neal. Well, I want to hear whichever way it is.

Mr. Errichetti. Well, remember I said to you earlier that Alex Feinberg and Sandy Williams met with McCloud, at the suggestion of Pete Williams asking me to call Alex, which he did. Now, I do not hear Pete Williams' name anymore, OK, except around May sometime, all right? And this is where Weinberg says, "Listen, you have got to get back into the act, here."

I said, "For what?"

He said, "Pete Williams." He said, "Alex cannot do it. Sandy cannot do it. We have got to have Pete Williams coming [193] in here in order to get the loan."

Now, that is where that began. And I had not talked about Pete—Senator Williams, that is——

Mr. Neal. But you had first mentioned Senator Williams' name?

Mr. Errichetti. No.

Mr. Neal. Yes. You said until January 11, that Feinberg was the bagman, Pete Williams' bagman.

Mr. ERRICHETTI. No, I am sorry, Mr. Neal. I said to Senator Williams that [deleted] had some friends of his at Abdul Industries who were lending money.

He said, "Oh, great. Get ahold of Howard Feinberg. He is looking for a loan." Go away, Pete Williams. There was no more Pete Williams. They concocted—"they", meaning Weinberg and whoever—that they got the mine, then they concocted to buy the plant.

Mr. NEAL. Well, wait a minute, now, don't spread all over that period of time. Since we have gotten into this, you had a meeting with Senator Williams on January 3, 1979.

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. And you mentioned the Abdul Enterprise thing——

Mr. ERRICHETTI. To Senator Williams.

Mr. NEAL.—to Senator Williams, and he said, "I will put Feinberg in touch with you," or something to that effect?

Mr. ERRICHETTI. For a loan for Sandy Williams.

[194] Mr. NEAL. Right. And Weinberg got in touch with you?

Mr. ERRICHETTI. No. I told Weinberg that Alex Feinberg and Sandy Williams wanted to meet him, at the suggestion of Senator Williams.

Mr. NEAL. All right.

Mr. ERRICHETTI. Period. There was no connotation that Pete Williams was going to be there or whatever.

Mr. NEAL. I understand, but in that conversation, you mentioned Senator Williams' name. Now, leaving that aside, I am talking about other than that, did Mr. DeVito or Mr. Weinberg, or anybody purporting to be a part of the Abdul Enterprises group, mention a public official's name as a suggested target—and I use the word, "target," in quotes—for you to go talk to, that you had not mentioned first?

Mr. ERRICHETTI. Me or someone else.

Mr. NEAL. Pardon me?

Mr. ERRICHETTI. Me or someone else.

Mr. NEAL. Well, someone else to your knowledge.

Mr. ERRICHETTI. I do not think so.

Mr. NEAL. OK. So it was always, then, after you mentioned the name, you or whoever. For lack of a better word, you have been given the title as a "middleman" of Abscam.

Mr. ERRICHETTI. Yes.

Mr. NEAL. So to your knowledge, at least, DeVito and [195] Weinberg never mentioned a name that had not previously been mentioned by a middleman?

Mr. ERRICHETTI. The closest to that, Senator, was Weinberg saying, "How about the [deleted]? Let's get him"—meaning not "get him" in that context, but "Let us get him in," the [deleted] of the [deleted].

I said, "Forget about it. [deleted] is—you cannot even get to talk to him."

Mr. NEAL. Are you saying that he did mention the [deleted] and you had not mentioned the [deleted]?

Mr. ERRICHETTI. I did not mention the [deleted], no.

Mr. NEAL. Are you saying that he mentioned the [deleted]?

Mr. ERRICHETTI. He mentioned, "We want Congressmen," plural, "We want [deleted] if that is"——

Mr. **Neal**. Oh, I see, generic [deleted]?

Mr. **Errichetti**. Yes, right. He did not say, "[deleted]." The police chief, judges, the whole line.

Mr. **Wheeler**. Mr. Errichetti, back on this play-acting thing, I think I understand your testimony as to what you meant by "play-acting", and that is that you understood, and you tried to convey, and you think you did convey, to the Congressmen—in this case, Myers—that this was all a show, that he would never be called upon to do anything——

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. —he was just going to go in and say the [196] words.

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. I have a tape transcript, before the meeting with Congressman Myers on August 22d, on that date, and the only three people present are you, Weinberg, and DeVito, the three people who are supposed to be going on—right? Is that right? Those are the three people who are supposed to know what is going on?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**.

> **Weinberg**. As soon as they start, as soon as they start, they get the other half. You know, at least we know they are starting it, they get it. Soon as we tell them to go ahead, we will give them the other half.
>
> **Errichetti**. It is started.
>
> **Weinberg**. Like, say, we call them up tomorrow, right, start making arrangements to the Yassir in, all right?
>
> **Errichetti**. Yeah.
>
> **Weinberg**. Then—
>
> **DeVito**. And then they'll get more.
>
> **Weinberg**. They'll get the other half. You don't get the 50.

Mr. **Errichetti**. Who don't get the 50?

Mr. **Wheeler**. Well, I don't know who don't get the 50. I assume that the deal was that they were going to get—of this $100,000 that you had been told had been allocated per [197] Congressman, they were going to get 50—like Myers was going to get 50 that day, and if in the future Yassir called on him to perform, then he gets the other half, and you don't get the other 50 until then; that is certainly what this says.

Do you want me to read it to you again?

Mr. **Errichetti**. No, you do not have to read anything.

Mr. **Wheeler**. Well, this is just the three of you—DeVito, you, and Weinberg.

Mr. **Errichetti**. What date is that, sir?

Mr. **Wheeler**. August 22. The hour was 12:49, before the payoff to Myers. Now, that does not sound, Mr. Errichetti, as though——

Mr. **Errichetti**. No, no—12:49?

Mr. **Wheeler**. That is right, just after the payoff to Myers.

Mr. **Errichetti**. Oh, OK. So he had walked out with 50.

Mr. **Wheeler**. That is right.

Mr. **Errichetti**. You have to understand that prior to that videotape, 11:45, or whatever number was clicking off the tape, he met me down in the lobby and said, "It has been changed."

I said, "What has been changed?"

He said, "It is only 50. The other 50, he wouldn't go for," meaning the sheik.

[198] Well, I immediately said, to myself and then to him, "OK, you and Tony are both taking the 50." All right. Now, what that is, I do not have the slightest idea.

Mr. NEAL. That is what you thought to yourself?

Mr. ERRICHETTI. Yes, sir, and I said it—I said it, also. I said it, sir, also. I said, "You have got even more of a job here. You guys are raking off the 50 before it even comes like it is supposed to." Now, how was I to prove that the sheik had changed his mind, or whatever?

Mr. WHEELER. Let me read you a portion from another tape, Mr. Errichetti, dated September 14, 1979. Again, the only people present are the three people who supposedly know what is going on—Errichetti, Weinberg, and DeVito.

> DEVITO. Well, any of these guys Republicans?
>
> ERRICHETTI. Could be Midwestern, yes, down.
>
> DEVITO. I don't know just, you know, just asking who.
>
> ERRICHETTI. I believe there is a couple of Republicans, yes.
>
> WEINBERG. Just down the line, we may want another favor.
>
> ERRICHETTI. I will not quarrel with that, either.
>
> WEINBERG. You know what I mean. So it pays.
>
> ERRICHETTI. [Inaudible] Pick the phone up.
>
> WEINBERG. So long as we got the green light, what the hell's the [inaudible].
>
> [199] ERRICHETTI. I'm telling you—all I'm telling you is that you know very simply, you are correct in that assumption, can't say no. Know why? Because I'm there.
>
> WEINBERG. Somewhere along the line, want a favor.

Again, Mr. Errichetti, it sounds as though with the three people who, in your mind, knew what was going on, you are talking about having to come to these Congressmen for a favor, possibly having to come to a Congressman, sometime down the road. That seems to be understood among the three of you.

You weren't aware this conversation was being taped, were you?

Mr. ERRICHETTI. Sir?

Mr. WHEELER. You weren't aware that these conversations were being taped, were you?

Mr. ERRICHETTI. Not to my knowledge, no. But what I said to you, sir, that is my interpretation of what was said.

Mr. WHEELER. We are going to take a break.

Senator HUDDLESTON. The Committee will be in recess for 10 minutes.

[Short recess.]

Senator HUDDLESTON. The committee will come to order, and we will resume.

Mr. Wheeler?

Mr. WHEELER. Mr. Errichetti, let me read you just a couple of lines from one more transcript on this issue of [200] play-acting. This is a transcript of a conversation on August 8, 1979, and the participants are Weinberg, Errichetti, and DeVito, and it goes like this—this is from the start——

Mr. ERRICHETTI. Excuse me, sir. Is this a telephone, or is it a person——

Mr. WHEELER. It is a meeting at the Hyatt House Hotel, room 1028, Cherry Hill, N.J., August 8, 1979.

Mr. **Errichetti**. All right, sir.

Mr. **Wheeler** [reading]:

> **Weinberg**. We will try and push it as fast as possible, all right, and uh, what is it, Myers, the Congressman?
>
> Mr. **Errichetti**. The Congressman.
>
> **Weinberg**. Yeah, we'll see if we get that started as fast as possible, too.
>
> **Errichetti**. He is ready, willing and able tomorrow morning. He called me this morning.
>
> **DeVito**. He'd have to introduce some kind of legislation, right, some kind of bill or something?
>
> **Errichetti**. Whatever you say.

Now, again, this is DeVito saying to you—and there is no one here to impress; it's just you, DeVito, and Weinberg—and DeVito says to you, "He'd have to introduce some kind of legislation, right, some kind of bill or something? Errichetti: Whatever you say."

[201] Again——

Mr. **Errichetti**. That is for the cameras, yes.

Mr. **Wheeler**. But you do not know that the cameras are there.

Mr. **Errichetti**. No, not me, him. He is saying it for the cameras.

Mr. **Wheeler**. He did not say this for the cameras.

Mr. **Errichetti**. The mere fact is, very simply, that he is on record saying, before the tape, he has to make legislation. I say, "Yes, OK, whatever you say." That was already talked to by me and Weinberg prior to that, which was all charade and all baloney.

Mr. **Wheeler**. Now, did you receive any portion—did you receive any money in connection with the Myers transaction on August 22, 1979?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. How much did you receive, and from whom?

Mr. **Errichetti**. After the money was exchanged with Myers, I walked out with Myers and into the lobby. I handed my nephew an envelope and said to him, "Joseph, wait for me," and handed him the envelope. Mr. Myers left with Johanson. After the meeting—I went back up, and we had a meeting—we finished finalizing the meeting where I was cussing and screaming and what have you—I left that meeting, got in the car, and went to where we met 2 hours before, an hour and a [202] half before, at the terminal. I went into the men's room, OK, removed $15,000, OK, sealed it back up. And Mr. Criden was waiting for someone to come for another meeting, and he stayed around. I took off, all right. I removed $5,000 of it and put it in the drawer, or whatever I did with it, and put the remaining $10,000 in an envelope and returned it to Mr. Weinberg, with the provisions of five and five—now, whether that became a reality or not, I don't know.

Mr. **Wheeler**. All right, let me back up on that. The first thing you said was you gave an envelope to Joey DiLorenzo?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. Where did you get that envelope?

Mr. **Errichetti**. From Mr. Myers.

Mr. **Wheeler**. And that was the envelope that contained $50,000?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. You gave it unopened to Joey DiLorenzo?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. You went upstairs, left him waiting for you?

Mr. **Errichetti**. In the car.

Mr. **Wheeler**. And then you went back downstairs?

Mr. **Errichetti**. After the meeting was adjourned or finalized.

[203] Mr. **Wheeler**. And you and Joey DiLorenzo, just the two of you, drove someplace?

Mr. **Errichetti**. Joey drove me to the end of the terminal—there was a terminal there, I don't remember which one of it was, but we had met earlier, I believe. I went to the men's room and met Criden there in the terminal, went up to a second floor there, there was a bathroom. I removed $15,000, gave him $35,000, meaning to Criden, to take back to Philadelphia.

Mr. **Wheeler**. And you kept $15,000?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. And what did you do with the $15,000?

Mr. **Errichetti**. I took $5,000, put it in my home, in a closet, somewhere, and put $10,000 in an envelope to give to Mel at a later date; there was no hurry for it. The next time I saw him—and I don't know where I saw him or when I saw him—but I believe—and again, I have got to say this—I believe it was in a bathroom of the Hilton.

Mr. **Neal**. What Hilton?

Mr. **Errichetti**. In New York, near the airport there.

Mr. **Wheeler**. And you gave him the $10,000?

Mr. **Errichetti**. Yes, sir.

Mr. **Wheeler**. So, at that point, you have received the $37,500 from the MacDonald payoff—what we call the MacDonald payoff; you know what I am saying——

Mr. **Errichetti**. Yes, sir.

[203-A] Mr. **Wheeler** [continuing]. And the $10,000 from the—I am sorry, the $5,000 from the Myers transaction——

Mr. **Errichetti**. Yes.

Mr. **Wheeler** [continuing]. And that is all the money you had received from Abdul Enterprises at that point?

Mr. **Errichetti**. At that point, yes.

Mr. **Wheeler**. Did you ever receive any more money from Abdul Enterprises?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. When was the next time?

Mr. **Errichetti**. Raymond Lederer, and I did not share it with anyone, meaning with Mel or anybody.

Mr. **Wheeler**. The Raymond Lederer payoff occurred on September 11, 1979. Were you there?

Mr. **Errichetti**. Yes. He knew me solely-he called me "Mario." I had never met him prior to that day either, by the way.

Mr. **Wheeler**. When did you get—describe how you got your payoff in that transaction.

Mr. **Errichetti**. Sir?

Mr. **Wheeler**. Describe how you got your money in that transaction?

Mr. **Errichetti**. I believe—and again, in trying to recollect this as best I can—I believe Mr. Criden brought it over from Philadelphia later, the next day, or something.

[204] Mr. **Wheeler**. But were you there on September 11 when the transaction occurred?

Mr. **Errichetti**. Yes.

Mr. **Wheeler**. In the room?

Mr. **Errichetti**. Yes. He left, and I stayed behind.

Mr. **Wheeler**. And Criden later brought you the money?

Mr. **Errichetti**. Sir?

Mr. **Wheeler**. Criden later brought you the money?

Mr. **Errichetti**. Yes. I believe, later in that day, there were other meetings that had to be—and I stayed on, stayed behind.

Mr. **Wheeler**. How much did Criden give you?

Mr. **Errichetti**. I don't want to lie to you. I don't remember if it was $7,500, $5,000—I'm not really sure.

Mr. **Wheeler**. And you didn't share that with anyone else?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. Did Criden tell you whether he was giving any money to Weinberg or DeVito?

Mr. **Errichetti**. No, sir. I didn't ask him, he did not volunteer. [205] I was supposed to take care of Mel. To my knowledge, that was not Criden's responsibility.

Mr. **Neal**. Were you supposed to share this with Weinberg?

Mr. **Errichetti**. As I did in the past, yes; but I did not.

Mr. **Neal**. You didn't?

Mr. **Errichetti**. That's right.

Mr. **Neal**. Did you ever have a conversation with Weinberg in which he inquired about his share?

Mr. **Errichetti**. Yes. I just said I didn't get any, so I've got to fight with them before we get anything——

Mr. **Neal**. Wait a minute. You had a conversation subsequent to receiving a part of the Lederer payoff?

Mr. **Errichetti**. No, after. There was a—you know, whatever I got, I was to share it with him, whether it was $5——

Mr. **Neal**. Wait a minute; wait a minute.

You said you had an understanding with Weinberg that you were to share what you got of the Lederer bribe?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. You didn't.

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. And are you saying now you later had a conversation with Weinberg in which he asked "Where's my share?" in substance?

Mr. **Errichetti**. I told him I had got nothing so there was [206] nothing——

Mr. **Neal**. Wait a minute. Did you have that conversation?

Mr. **Errichetti**. I'm telling you the conversation.

Mr. **Neal**. All right. Did you have a conversation in which he inquired about his share?

Mr. **Errichetti**. Yes. The answer is yes, sir.

Mr. **Neal**. All right. And what did you tell him?

Mr. **Errichetti**. I received nothing.

Mr. **Neal**. Did he ask you why not, what happened?

Mr. **Errichetti**. It was a mixup, you know whatever I said then, that was it. I didn't have it. I couldn't share it, so there was nothing to talk about.

Mr. **Neal**. I don't know how many scams within the scam this is now, but they're piling up, aren't they? [Laughter.]

Mr. ERRICHETTI. You want the truth? I'm telling you the truth.

Mr. NEAL. We want the truth. OK.

Mr. WHEELER. Now, with respect to Congressman Lederer, Mr. Errichetti, did you give him the same kind of instructions you had given Congressman Myers?

Mr. ERRICHETTI. Basically, yes.

Mr. WHEELER. Well, "basically." Did they differ in any respect?

Mr. ERRICHETTI. No. It was the same script as Myers got, [207] as best I could say it to both people. Maybe different words, but basically the same thing.

Mr. WHEELER. When did you give Congressman Lederer his instructions?

Mr. ERRICHETTI. Just prior to him going up to the room.

Mr. WHEELER. Had you met him before?

Mr. ERRICHETTI. No.

Mr. WHEELER. Did you know—had you been told by anyone whether Congressman Lederer had already been given similar instructions by someone else?

Mr. ERRICHETTI. Just the preliminaries, I presume, either from—either from Criden and/or Johanson or whoever, you know. I'm not sure which one of those gentlemen had the ability to chat with Mr. Lederer. I do not know. Except that I did chat with him prior to going up and going over it explicitly in a couple of minutes as to what was expected and what was going to happen.

Mr. WHEELER. In August of 1979, you mentioned some other public officials' names to Weinberg—that is, other Congressmen, didn't you?

Mr. ERRICHETTI. If I did, sir, it was ones that were related to me that Mr. Criden knew or was about to talk to, and I just related them as a messenger, saying "Oh, we've got [deleted] or [deleted]." I'm not sure of the names. But in that general context.

[208] Mr. WHEELER. [deleted], [deleted], and [deleted]?

Mr. ERRICHETTI. Yeah, I'm sure——

Mr. WHEELER. You did mention those names.

Mr. ERRICHETTI. I'm sure I did.

Mr. WHEELER. Did you tell Weinberg that these were people who you knew or could get?

Mr. ERRICHETTI. Yeah, I believe I did.

Mr. WHEELER. As opposed to people who Criden knew or could get?

Mr. ERRICHETTI. I believe I did, yes, sir.

Mr. WHEELER. But Criden was, in fact, the one who gave you those names?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Did Criden tell you that he knew these people?

Mr. ERRICHETTI. He knew of a business associate that was close to them.

Mr. WHEELER. Did he tell you that he could get these people?

Mr. ERRICHETTI. He was going to attempt to do so.

Mr. WHEELER. Did he ever mention Congressman [deleted] to you?

Mr. ERRICHETTI. [deleted]?

Mr. WHEELER. From [deleted].

Mr. ERRICHETTI. He may have—If it is, it's on the tape [209] of me saying it to Weinberg, so whatever names I gave to Weinberg were generated by Criden.

Mr. WHEELER. But in every instance, when you gave a name to Weinberg that Criden had given you, did you tell Weinberg that Criden had told you?

Mr. ERRICHETTI. No, no. I didn't mention Criden's name, that he had the forte or the ability to contact these people. It was my contact.

Mr. WHEELER. And did you tell Weinberg in each of those instances that you could produce these people?

Mr. ERRICHETTI. Basically, yes.

Mr. WHEELER. Did you tell Weinberg, as to each of these people, that you had actually spoken to them?

Mr. ERRICHETTI. I may have. I believe I did, sir.

Mr. WHEELER. And that they would be willing to take money.

Mr. ERRICHETTI. Yes, sir. I believe so. I think there are transcripts of that. If they're on the transcript, yes, if it's not someone else's voice.

Mr. WHEELER. Is your recollection that Criden also made those representations to you?

Mr. ERRICHETTI. As to what, sir?

Mr. WHEELER. That he knew that these people would, in fact, be willing to engage in this transaction?

Mr. ERRICHETTI. He was attempting to have, either he or [210] someone else, that knew that particular individual, to give him the initial script. It was not beyond that, to see if—is "testing the waters" a better word?

Mr. WHEELER. Well, if that's all Criden told you, that he would "test the waters," and you told Weinberg that these people—that you could produce these people and they would take the money under these circumstances—are you saying you embellished on it when you talked to Weinberg?

Mr. ERRICHETTI. I certainly embellished on it. As to what degree I said, I don't remember exactly. Was I embellished? Yes.

Mr. WHEELER. Other than the payments that you received in connection with the MacDonald, Myers, Lederer transactions, did you receive any other payments?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. How many other?

Mr. ERRICHETTI. I'm not sure. Three or four.

Mr. WHEELER. In connection with which transactions?

Mr. ERRICHETTI. Thompson, Murphy. They were small amounts, negligible amounts as far as compared to the other ones.

Mr. NEAL. Why were you receiving money from the Thompson transaction? You didn't sponsor Thompson, did you?

Mr. ERRICHETTI. I set the ground rules on that one.

Mr. NEAL. Pardon me?

[211] Mr. ERRICHETTI. I set the ground rules on that one.

Mr. NEAL. You were franchising this out, then, at that time?

Mr. ERRICHETTI. For a better word, I guess that sounds pretty good.

Mr. NEAL. Well, was that understood between you and Criden, that he share with you?

Mr. ERRICHETTI. Absolutely. I didn't know Thompson.

Mr. NEAL. And you had no part in Thompson coming in?

Mr. ERRICHETTI. I didn't know Thompson. To this day I don't know Thompson.

Mr. NEAL. You had no part in him coming before the—

Mr. ERRICHETTI. The answer is yes, sir, I did not.

Mr. NEAL. But you profited from it?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. Did you share any of that money with Weinberg?

Mr. ERRICHETTI. No, sir.

Mr. NEAL. Did he ever ask you about it?

Mr. ERRICHETTI. No, sir. It was a moot point, moot question. It was never brought up. I was more or less sliding out of the picture as far as Mr. Weinberg. I was refusing to take his phone calls or whatever.

Mr. NEAL. Did you receive a part of the Murphy money?

Mr. ERRICHETTI. A small portion, yes.

Mr. NEAL. Did you share that with Weinberg?

[212] Mr. ERRICHETTI. No, sir.

Mr. NEAL. Did you have anything to do with with Murphy coming in?

Mr. ERRICHETTI. No, sir.

Mr. NEAL. Again, that was the ground rules between you and Criden?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. By small portion, do you mean something in the neighborhood of $5,000?

Mr. ERRICHETTI. A couple of thousand.

Sir, can I just briefly go over this, what I have in my hand. You were talking about Weinberg and saying what did he receive. I think it's incumbent—there are some gifts here that I think I should go on record that I purchased at his request for the sheik.

Mr. WHEELER. We will come to the gifts, I assure you.

Now, you said you received cash in connection with the Thompson transaction, the Murphy transaction, and the ones we have already talked about.

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Did you receive any other cash?

Mr. ERRICHETTI. A very small amount. I believe it was from Schwartz, $700, something like that.

Mr. WHEELER. From George Schwartz?

Mr. ERRICHETTI. I wasn't aware of it happening until [213] afterwards, do you follow me?

Mr. FURST. I think he received it from Mr. Criden, on the Schwartz transaction.

Mr. ERRICHETTI. Yes, from Mr. Criden. I wasn't aware it was transpiring or being set up or being done, except he came in and said "Here's a little gift for you." That was, like I say, in January or something, something like that. I didn't ask for it and he was honest enough to bring it over. He says, "Here's a couple of dollars."

Mr. WHEELER. You said you didn't have anything to do with setting up the Murphy transaction; is that right?

Mr. ERRICHETTI. I did not.

Mr. **Wheeler**. Did you let Weinberg know that you knew about the Murphy transaction?

Mr. **Errichetti**. I may have, but again, it was not one of participation on my part but one of having knowledge of. Is that clear?

Mr. **Wheeler**. All right. The Mario Noto incident was on September 19, 1979, Mr. Errichetti. I must say that the documents are in some state of confusion on who knew what. Why don't you just tell us how the Mario Noto incident came about, what you knew, what Mr. Criden knew, and what Mr. Weinberg knew.

Mr. **Errichetti**. OK. Mr. Weinberg was trying to get someone who would be amenable to green cards and work cards and **[**214**]** those kind of things. I proposed a name. I believe the name was Tetrazzini, after a chicken, and he said, "Oh, that's great. What's his capacity?" "I think he's an inspector under a couple of other guys" and whatever. He says, "Aw, beautiful. Look, we'll get 50 for him, 25 he gets, and 25 we get."

Mr. **Neal**. Wait a minute. You're not just being flippant. You actually used the name "Tetrazzini"?

Mr. **Errichetti**. Yes, sir. It's on the tape, Tetrazzini or Teracini, something like that. I know chicken goes with it as a meal.

He says, "Fine. Get this guy and bring him in, same arrangement, same speech, same split." OK. I didn't know any Teracinis or Tetrazzinis from Irish stew. But I got with Criden and I says, "Your law partner, he looks Italian"—by the way, he was Jewish. "He's supposed to be knowledgeable on green cards. That's his bag. He's an attorney, isn't he?" He said, "Oh, yeah."

So I said, "Tell him if he wants to impersonate Nopo, Mario Nopo", the next thing I know they're in my office, Criden and Ellis Cook——

Mr. **Wheeler**. And you knew who Ellis Cook was? You knew he was Ellis Cook. You didn't think he was an immigration official?

Mr. **Errichetti**. Oh, no, no. He was Ellis Cook. He was **[**215**]** Criden's law partner.

Mr. **Wheeler**. And you knew that?

Mr. **Errichetti**. Oh, yes. So I explained the scenario to him what they were looking for in this particular person, and would he be interested in being eligible on green cards, and go take a 24-hour course on it, and see if he could converse intelligently with whoever, and he said fine. I said—I called back to Weinberg and said, "Well, we've got one better, which is the [deleted]."

He said, "Oh, terrific. When?"

And I said, "I am sure—I will get back to you as far as time. You will have to be in Washington," because they were in Washington now; they were operating out of this townhouse in Washington, D.C. versus Long Island.

He said, "OK."

So it was arranged that Ellis Cook would go down. I met him in Washington, D.C., and my nephew drove us over to this home—I am not sure whether it was "E" Street or whatever, but it was a very lovely home that was used for whatever purpose, and Ellis Cook went in, and Ellis sat there, and he got a close look from DeVito, and there became a discrepancy as to whether he was a ringer or not, OK, and I was called aside as to, they do not think he is the same fellow as was represented as being Mario Nopo, looks like somebody else——

[216] Mr. WHEELER. Did they tell you how they concluded that?

Mr. ERRICHETTI. Well, they said they sent Ernie down to the Immigration Department to see what his appearance was, his facial appearance, and they concluded that was not one and the same. So there was no transaction taken.

Now, Weinberg was not cognizant of the fact that he was a ringer. All he was concerned was that he was the individual, and if he were the individual, he was to share in his dollars, but not—meaning if he were Nopo, if he were the real Nopo. He was not cognizant of him being a ringer.

Mr. WHEELER. Beforehand?

Mr. ERRICHETTI. Beforehand.

Mr. WHEELER. Because you did not tell him.

Mr. ERRICHETTI. That is correct.

Mr. WHEELER. Weinberg did not know that he was a ringer beforehand, but do I understand you correctly that you thought beforehand that Weinberg did not care if you did bring in a ringer?

Mr. ERRICHETTI. I thought that, or I would not have attempted to do so.

Mr. WHEELER. All right. Now, after the Noto incident occurred, there is a marked decline in the number of recorded conversations between you and Weinberg or you and Amoroso, or [217] meetings. Did that decline actually occur? In other words, was there in fact a dropping off of the relationship after that?

Mr. ERRICHETTI. Well, there was a—you know, let's face it, to be totally honest with you, you bring a ringer in, and you get caught—your credibility goes down to minus zero, or minus whatever. So I guess it gets to the point where there is a strained relationship, to say the least, that there is a falling away of, I guess, confidence, for a better word, and the phone calls became less and less and less.

Yes, the answer is.

Mr. WHEELER. But Weinberg kept trying to call you, didn't he? It was you who cooled the relationship.

Mr. ERRICHETTI. Well, I had Criden to run the ball around, versus myself.

Mr. WHEELER. Excuse me.

Mr. ERRICHETTI. There was no need for duplication. Criden was now running with the ball.

Mr. WHEELER. Well, you had a conversation with Weinberg in which you expressed anger at having heard from Criden that Weinberg had suggested to Criden that the ringer might have been someone from your office, isn't that right?

Mr. ERRICHETTI. Yes. That was all part of a defense that I would have to put up and try to defend. Not true—the person was not from my office, was from Criden's office.

[218] Mr. WHEELER. Right, but did you tell——

Mr. ERRICHETTI. No, no.

Mr. WHEELER. Did you express that anger to Weinberg in order to keep yourself involved in the ongoing enterprise?

Mr. ERRICHETTI. Well, I was just trying to clear up something with him, that if he thought it was somebody from my office, he was crazy, and that was that. So I was angry with regards to him even thinking that was the case. Now, if you want to call that showtime, or acting on my part, fine. I mean, trying to relate to him that I had no knowledge that it was a ringer; I was fooled, also, OK.

Mr. **Wheeler**. At this point, Mr. Errichetti, we are in late September, early October 1979, and Weinberg had told you many months before, at least by March 30, 1979, that they had all this money that they were willing to pay for Congressmen, perhaps, Senators, and State legislators.

Mr. **Errichetti**. Uh-huh.

Mr. **Wheeler**. You had given him a list, in two different forms, of all sorts of State legislators.

Mr. **Errichetti**. Uh-huh.

Mr. **Wheeler**. Did you ever make any effort between March 1979 and October 1979 to produce any of those State people for Abdul Enterprises?

Mr. **Errichetti**. No.

Mr. **Wheeler**. Why not?

[219] Mr. **Errichetti**. I did not have the time.

Mr. **Wheeler**. Excuse me?

Mr. **Errichetti**. I did not have the time. As I said to you earlier, I was locked into a 7-week primary battle, which took me into the past June, and then I was called on for Pete Williams to activate him, because the others were too slow and/or did not have the abilities to convey, I guess, Weinberg's speech to Pete Williams through Alex and/or Sandy Williams.

Mr. **Wheeler**. Did Weinberg ever try to pin you down as to who the ringer was?

Mr. **Errichetti**. He may have, but you know, I was evasive and—you can try to pin someone down, and if you want to be pinned, you can be pinned; if you do not want to be pinned, you just keep on, making up other stories, getting angry, you know, go through whatever it does to knock somebody off the trail.

Mr. **Wheeler**. Did Amoroso ever try to pin you down on who the ringer was?

Mr. **Errichetti**. Just that day that it occurred, and he was upset, and we got into a little confrontation, and I was saying, "Oh, somebody put a ringer on me; I am going to call the State police," you know, those kinds of things. So, you know, it was an exercise in——

Mr. **Wheeler**. A scam.

[220] Mr. **Errichetti**. Yes, exercising mentally as to who is going to survive and who is going to get caught.

Mr. **Wheeler**. And you thought you had persuaded them that you had been duped, as well?

Mr. **Errichetti**. I was not sure. That was my defense, for a better word. Now, whether it was believed or not, I do not know. My guess is, no.

Mr. **Wheeler**. All right, Mr. Errichetti. Now, on the gifts——

Mr. **Neal**. Could I ask a question before you go into that?

Mr. **Wheeler**. Sure.

Mr. Neal. Mr. Errichetti, as I understand it, you talked directly, spinning out what you say the scenario, to Congressman Myers, Congressman Lederer, Mr. [deleted], then the MacDonald yarn——

Mr. Errichetti. There was no—there was a script. It was not one that was, if you are not going to do anything and go before the cameras——

Mr. Neal. I understand.

Mr. Errichetti. OK.

Mr. Neal. Anybody else—Myers, Lederer, MacDonald, [deleted]?

Mr. Errichetti. Pete Williams, but that is——.

Mr. Neal. Pete Williams, but leave that aside. That is all of them—I will ask you something about that later—anybody **[221]** else?

Mr. Errichetti. Can you refresh my memory? [Conferring with counsel.] I don't think so. I think that is all, sir—I think.

Mr. Neal. I mean, that you talked to directly?

Do we have any information on anybody else, Mal, other than the four that he talked to directly?

Mr. Errichetti. You are welcome to refresh my memory, if you have some.

Mr. Neal. That is all right. In going to these people, did you have any concern that they might say, "Well, that is fraudulent, and I am going to report it?"

Mr. Errichetti. No, because I——

Mr. Neal. Did it cross your mind that that was a hazardous duty?

Mr. Errichetti. You have to understand, sir, that with the two Congressmen, I was not the first to initiate the conversation. I was the final script writer, or prior to going in, and so that did not enter my mind.

Mr. Neal. With respect to those two, you assumed that they had been conditioned, and there was no danger; is that what you are saying?

Mr. Errichetti. Well, no, no danger, because the fact is that, very simply, there was nothing for them to do, and they were to get a gift, and they were to pay taxes on it; that **[222]** was my understanding. So they walked in——

Mr. Neal. Well, I do not know whether you—are you a lawyer?

Mr. Errichetti. No, sir.

Mr. Neal. Maybe you would not be aware of this, but what you were doing would appear to be—and I think your lawyer would tell you—would probably be wire fraud, fraud by wire. Maybe you did not consider that you—you did not consider any danger in any of this, in talking to these people—talking to [deleted], talking to MacDonald, talking to Lederer, or talking to Myers—no danger of you getting caught?

Mr. Errichetti. No danger of them going to someone and saying——

Mr. Neal. Right.

Mr. Errichetti. No.

Mr. Neal. OK.

Go ahead, Mal.

Mr. **Wheeler**. On Congressman [deleted], and on Senator [deleted], did Criden ultimately tell you to scratch these people, that he was not going to be able to produce them?

Mr. **Errichetti**. Well, it never happened, so, apparently, he did say something. You know, they never came before the—the final act—so apparently——

Mr. **Wheeler**. Well, let me read you a portion of a transcript from September 18, 1979, between you and Weinberg, **[223]** and Weinberg says:

> Whatever happened to, did you hear from the guy from [deleted]?
>
> **Errichetti**. No. I tried to call back to the lawyer, and I couldn't get him.
>
> **Weinberg**. Uh-huh.
>
> **Errichetti**. All I—when I asked, I says, "Dani, you know, just tell me, it is'—all he said was, 'Please tell the mayor that we have to scratch these two gentlemen."
>
> **Weinberg**. Right.
>
> **Errichetti**. She didn't know what he was talking about. She said, "Well, Congressman [deleted] is expected to talk to the mayor tomorrow, and his wife died; there is a death in the family."

And then, later:

> **Errichetti**. Senator [deleted] is just reassessing his position, and he said he'll get back to me as to when he wants chat with me.

Did Criden tell you that information?

Mr. **Errichetti**. Yes, sir. I never spoke to [deleted] and/or [deleted].

Mr. **Wheeler**. And you didn't just concoct that information on your own, about a death in Congressman [deleted] family?

Mr. **Errichetti**. I did not know his wife died; I had no knowledge of his wife dying, or whatever.

Mr. **Wheeler**. And you do recall that Criden told you that story?

[224] Mr. **Errichetti**. It would have to be.

Mr. **Wheeler**. On March 31, Mr. Errichetti, in the meeting that you had after the MacDonald payoff, with Weinberg and DeVito and some other people, and then there came a point when Weinberg pulled you aside, and just the two of you were talking—and I read you a portion of this a few minutes ago—let me read you another portion of it. This is just you and Weinberg; all right?

> **Errichetti**. Will I see you tomorrow, or what?
>
> **Weinberg**. I'll give you a call. Don't worry about it. I'll explain to Tony.
>
> **Errichetti**. [Inaudible.]
>
> **Weinberg**. Hey, I'll come to see you tomorrow. Don't worry about it.
>
> **Errichetti**. I won't say nothing to Tony.

Now, what is it that you are saying to Weinberg you are not going to say anything to Tony about, and that Weinberg says, "I'll explain to Tony?" What was that all about?

Mr. **Errichetti**. My trip back and the phone call the night before, about Margo and whatever have you.

Mr. **Wheeler**. Why did Weinbeg tell you he didn't want Tony to know about that?

Mr. **Errichetti**. You'll have to ask Weinberg.

Mr. **Wheeler**. He did not tell you, though? He didn't give you any reason?

[225] Mr. **Errichetti**. No. That was satisfactory to me, don't tell Tony. OK, don't tell Tony.

Mr. WHEELER. Did Weinberg ever tell you not to believe things that Amoroso said?

Mr. ERRICHETTI. Amoroso?

Mr. WHEELER. Right; DeVito.

Mr. ERRICHETTI. No. McCloud. He had a great disdain for McCloud.

Mr. WHEELER. But not Amoroso?

Mr. ERRICHETTI. No, sir; a great admiration.

Mr. WHEELER. Did Weinberg ever tell you that Amoroso might be listening in on your conversations, on telephone conversations?

Mr. ERRICHETTI. No. The only conversation that he had with me about DeVito was that he was a swinger, loved the women, he loved to drink, he loved to gamble. He got what he wanted from the sheik; he had a big, blue Lincoln, brand new, spanking new. No—I guess, for a better word, a playboy.

Mr. WHEELER. Other than the one instance you have talked, where he told you that Margo Kennedy would be listening in on the telephone on March 31, did Weinberg ever tell you, prefatory to any other conversation, that anyone might be listening in on a conversation, and you should structure your talk in a certain way?

Mr. ERRICHETTI. No; just her, just her.

[226] Mr. WHEELER. And just in that one instance?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Now, on the gifts——

Mr. NEAL. Before you go forward, Mr. Errichetti, did Weinberg ever talk to your wife?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. When?

Mr. ERRICHETTI. Whenever she picked the phone up and he was on the other end of the line. It was, "Hello" and "Just a minute."

Mr. NEAL. Well, Mr. Weinberg has testified in court under oath that the call that you say took place March 31, he never talked to you, that he must have talked to your wife for 4 minutes.

Mr. ERRICHETTI. He talked to my wife for 4 minutes? She wouldn't talk to him for 4 seconds—not because of anything except she did not know him, there was nothing for her to talk to him about for 4 minutes or for 4 seconds.

Mr. NEAL. If Mr. Weinberg says that he did not talk to you on March 31, obviously, you say that he is lying—on the night of March 31—because you say that is when you had this call that was set up in advance, and Margo was going to be listening, so you were supposed to talk about Tony gets $25,000 and everything else in that conversation?

Mr. ERRICHETTI. Mr. Neal, I spoke to him that night; [227] whether it was 8:53 or whatever time it was, I talked to him that night and gave him what you read, or what you are reading, in the tape that he says is April the 1st.

Mr. NEAL. OK.

Mr. WHEELER. Mr. Errichetti, before we get to the gifts, let me ask you some specific questions about some bank instruments.

You have testified about two incidents involving bank instruments. Did you ever give to Mel Weinberg any certificates of deposit—even if one, all right, even if one, in any of these cases—did you ever give Mel Weinberg even one certificate of deposit drawn on the Chemical Bank?

Mr. ERRICHETTI. One?

Mr. WHEELER. One or more.

Mr. ERRICHETTI. The one that he gave me that I typed up, they might have been Chemical Bank; I don't know. Is that what you mean?

Mr. WHEELER. In any fashion?

Mr. ERRICHETTI. I don't know. I mean, I don't know the name of the bank. I don't know.

Mr. WHEELER. All right. Did you ever give Mel Weinberg any checks drawn on the First National Bank of Tehran?

Mr. ERRICHETTI. Checks?

Mr. WHEELER. Right.

Mr. ERRICHETTI. I don't have a bank account there.

[228] Mr. WHEELER. Did you ever give Mel Weinberg any checks?

Mr. ERRICHETTI. No, sir, I don't remember any checks.

Mr. WHEELER. All right. Did you ever give Mel Weinberg any CD's drawn on Citibank?

Mr. ERRICHETTI. The same applies as to the first. I don't know what those banks were on those instruments. They could have very well been; I don't know.

Mr. WHEELER. Now, on the gifts, did you ever give or cause to be given to Mel Weinberg a microwave oven?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And dishes?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Was that one transaction, microwave oven and dishes?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. How did you effect that transaction?

Mr. ERRICHETTI. He said the sheik would love to have a microwave oven—and not the dishes, by the way—and that it would be very nice for me to ingratiate myself with him in regards to these particular kinds of things that he would find very kind on my part, and it would enhance my position, along with the other things that I had been doing and screaming about and claiming to be, and would have also a man of generosity.

[229] Mr. WHEELER. When was this?

Mr. ERRICHETTI. The timeframe, you know—it may have been the very first gift, again, being back in January. So if you are going ask me about January, February, and March, I am not going to tell you because I don't know. I mean, my nephew delivered gifts. My secretary bought the microwave oven, and she said, "Oh, we have to have dishes, too, for this guy to eat"—thank God—so we got dishes on top of it.

Mr. WHEELER. Your secretary is Dani Anise; right?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And did she make the purchases herself?

Mr. ERRICHETTI. On that one, yes.

Mr. WHEELER. On the microwave and the dishes?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. All right. But who delivered the gifts?

Mr. ERRICHETTI. I believe, Joey.

Mr. WHEELER. Were there more gifts?

Mr. ERRICHETTI. Oh, yes.

Mr. WHEELER. Was one of them a video recorder?

Mr. ERRICHETTI. Is that what you call a Beta-Max?

Mr. WHEELER. That is what you call a Beta-Max. "Beta-Max" is a brand.

Mr. ERRICHETTI. Yes, and the trade name—I associate the video with the Beta-Max. Maybe I am wrong, and I should say RCA instead.

[230] Mr. WHEELER. When did that occur?

Mr. ERRICHETTI. That's the next gift, I believe, and that was delivered by Joey, and that was bought in Cherry Hill, and I think there is a receipt for it, and that was because the sheik—meaning Mel, telling me the sheik—would love to have this beautiful recorder because he enjoys X-rated films, and he would like to, I guess, look at them in the privacy of his bedroom, or whatever, and he got a Beta-Max, for a better word.

Mr. WHEELER. And who bought that?

Mr. ERRICHETTI. Who bought that?

Mr. WHEELER. Who bought it?

Mr. ERRICHETTI. Me.

Mr. WHEELER. Did you personally go out and buy it?

Mr. ERRICHETTI. No, no, no, no. I just told you; Joey, and I think a fellow named George Norcross, went to an outfit in Cherry Hill and bought it—and Joey delivered it.

Mr. WHEELER. Where did Joey get the money?

Mr. ERRICHETTI. Joey got it from my secretary, who, in turn, got it from a fellow named James Meiler, who was very close to me, a neighbor of mine down at the seashore, who had scads and scads of money. He is the one who introduced me to Criden, and he is the one who said to me that, "Anything that you need for, as far as money is concerned, because you don't have the money, this is the way they do business; you just [231] have my secretary call, and I will supply the money for anything he wants." And I told my secretary, "You call Meiler," on this particular—I think the first one was—I think I paid for the microwave, because that was a small item, and then as they got larger, Mr. Meiler paid for them.

Mr. WHEELER. And he gave her cash?

Mr. ERRICHETTI. Yes, sir; to my knowledge, yes.

Mr. WHEELER. The next gift was what?

Mr. ERRICHETTI. A hi-fi—I believe it was a hi-fi—complete with all the accessories. That was given to me, a picture was given to me, on April 1, and it was a picture out of Sam Goody's advertisement, and it showed these lovely speakers and whatever.

He said, "Now, this would be a perfect gift for the sheik, because it is his birthday." All right. But when I come back, I said, "I can't go for this number," meaning the number that was on Sam Goody's ad, I think, was thirty-some hundred dollars, whatever it may be. I said, "Better find this guy something cheaper, wholesale."

And I believe my nephew went out and also purchased it through Dani calling Meiler, Meiler giving the money, and so forth.

Also, when I was on the phone with him, and we were about to arrange for a meeting with myself and for Mr. Weinberg as to where to deliver this gift, I said to him, [232] "What is the address for this fellow? I want to send him a letter."

He said, "Oh, just a minute."

I said, "Don't tell me. Tell my secretary. She is the one who is going to type the letter up."

So, she got on the phone and he gave her the name and the address, and she called my city attorney, because he was, in addition to being the city attorney, also the attorney for the Catholic Diocese of Camden, and he wrote very flowery letters, and he had a nice ability with the English language, and he composed a letter, I signed it, and it was hand-delivered along with this recorder and this letter, which we have copies of and I am sure you have copies of.

Mr. WHEELER. You said it was on April 1 that Weinberg gave you the picture out of the New York Times?

Mr. ERRICHETTI. Sir?

Mr. WHEELER. You said it was on April 1 that Weinberg gave you the picture out of the New York Times?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. Was that when you drove up to New York?

Mr. ERRICHETTI. That is when I gave him his share of the bounty.

Mr. WHEELER. And he, at the same time, gave you this picture?

Mr. ERRICHETTI. Yes, sir.

[233] Mr. WHEELER. So, you had just received $37,500 from Abdul Enterprises?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And, nevertheless, you sent your secretary to Meiler to get the money for the stereo set?

Mr. ERRICHETTI. Yes, sir; yes.

Mr. WHEELER. Incidentally, by the time that you gave, through your nephew, Weinberg the video recorder in March 1979, a rough summary of some of the events that had happened by then would include that you had flown to New York on December 1st, you had driven to New York on January 6, you had gone to New York in some fashion on January 19, you had helped Weinberg get $25,000 on January 20, you had given Weinberg a microwave oven and dishes, and you gave Weinberg—not knowing it was for Weinberg—a video recorder, and meanwhile, out of all this, you hadn't gotten a penny.

What was it, Mr. Errichetti, that caused you to be willing to spend so much of your own money in such a short period of time for, or on behalf of, this man that you had just met for the first time on December 1, 1978?

Mr. ERRICHETTI. Well, that's—that's something I have asked myself a thousand times. I guess, when you want to believe, and you dream about millionaires and fairytales, you hang on, and the carrot is always one notch ahead of you, like the rabbit running around the track, and there is a possibility [234] of tremendous opportunity, and I guess you believe. I cannot put it any more succinctly than that.

Mr. WHEELER. After the stereo set, did you give anymore gifts to Weinberg?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. What did you give him?

Mr. ERRICHETTI. Three televisions.

Mr. WHEELER. When did that happen?

Mr. ERRICHETTI. I think that was January—I am sorry, June. That is my guess, because that was the timeframe.

Mr. WHEELER. Of 1979?

Mr. ERRICHETTI. Yes, sir. These are all 1979. And that was because there were three cousins of the sheik who sat on the board of directors who wanted—who were about to peruse and evaluate the loan for Guccione, for his Penthouse casino operation in Atlantic City, and it was just a way of taking care of the three cousins, who would enjoy watching television. And they were purchased in the same fashion and delivered, and I believe they were delivered to the Hyatt House in Cherry Hill, to a van that was parked there.

Mr. WHEELER. Were you there? Did you participate in that?

Mr. ERRICHETTI. I accompanied the three TV's, and my nephew was driving. I met them at the lobby, and my nephew continued around, I think, the rear, to either park his car and get the key from Mel to open up the van, to put the TV's in, [235] and return the keys. I believe that is the case. Did I see them load them? No.

Mr. WHEELER. Who paid for the TV's?

Mr. ERRICHETTI. The same scenario.

Mr. WHEELER. Mr. Meiler?

Mr. ERRICHETTI. Mr. Meiler.

Mr. WHEELER. Were there any other gifts after that?

Mr. ERRICHETTI. Well, back in January, I was down there—I flew down there at my expense—and he paid for the room, by the way, and——

Mr. WHEELER. This was down to Florida?

Mr. ERRICHETTI. Yes.

Mr. WHEELER. This is the January 25 flight we talked about already?

Mr. ERRICHETTI. Yes, sir.

I was accompanying him down to Miami. We went to Jai-alai games, or something; on the way back, we went to the dog tracks. We spent a day where he was programing me, where we had an opportunity to sit in the same car, and he went on to the opportunities that the Arabs, who are still in the backwoods, whimsical, and so forth, as I said earlier, and we had an opportunity to become millionaires, our own business, and so forth. And while he was on that, he said, "Look, by the way," he says, "the sheik doesn't have a Seiko watch." OK. So I went to Marsh's. I think there is [236] a store there, near Marsh's, in Marsh's, at the shopping center. I bought the cheapest Seiko I could get, which cost about $300, and which I paid for, and I bought a jogging outfit for myself, and I walked over and walked back, and I said, "Here, give this to your boyfriend," whatever his name is, Habib, or whatever.

Then—that is January. Now, back toward June or July, whatever it may be——

Mr. WHEELER. The cheapest Seiko watch you could find was $300?

Mr. ERRICHETTI. Yes, sir. He had given me the specifications, basically—you push this button down, and a bell rings, and so—it wasn't just a plain, old Seiko that you could buy for $1.98. That was not the case. He had to make sure he gave the specs. He said, "Oh, this has got to have a clock and dates," and whatever have you, so——

Mr. **Wheeler**. Did you ever see that watch again?

Mr. **Errichetti**. No, sir.

Mr. **Wheeler**. You never saw Weinberg wear it?

Mr. **Errichetti**. He had a Seiko. Now, whether it was the one I bought him or not, I don't know. It might have been. It could have been. But I can't claim it.

Mr. **Wheeler**. All right. Go ahead.

Mr. **Errichetti**. Later, in the month of July or August—I am really not sure; I think it would be more like August—he [237] said, "What would be a nice gift for the sheik would be a goldpiece, an ounce of gold." So I bought an ounce of gold at the bank, the First People's National Bank, $432. Now, I am not sure, my mind is hazy whether it was two half-ounces or whether it was one ounce, but I know it was one ounce, and that is the price I paid. OK. And he in turn gave it to his boyfriend, supposedly.

The last time was the month of October—16, 17, 18, I am not sure what time. I had not been conversing with him, but my secretary came in and said, "Mel's on the phone. It's very important you chat with him." I got on the phone, and I said, "Yes, Mel, what is it?"

He said, "I'm here at the Hilton Hotel in route 73 and 295 in Cherry Hill," he said, "and Tony is in bad shape in regards to some problems he has. Please come over. I need your help."

I get in the car, and I believe my nephew drove me over. I said to my nephew, "Joey, do me a favor. You take a couple of bucks and buy me another sweat outfit"—or, jogging outfit, I think it was—"You go over to the mall, and by the time you get back here, I will have been finished with Mel, because I don't expect it to take anymore than 10, 15 minutes."

He said, "Fine," and he went on his way.

I went upstairs, walked in, and there was a skinny guy [238] —and Mel—who I had never seen before. The skinny fellow walked out of the room, and Mel stayed behind, and he said, "Tony has been gambling so heavy, he needs cash desperately before the sheik finds out. He needs $5,000." OK.

I said, "I don't have $5,000."

To make a long story short, he said, "Look, whatever you can get your hands on, please."

I said, "I'll look into it. I'll let you know."

He said, "Well, I have to leave tomorrow morning early for New York, and I'll call you. And please, work on something to get some money for poor Tony."

He calls me, and I said, "All right, I'll get $3,000 up to you."

We had to come to the Ionics Room, and "I'll meet you"—I think it was, I am not sure—Ionosphere Room—I am not sure whether it was, I think it was Sunday and he had planned for me to go up; he said he would give me a couple days. In the meantime, my special counsel dies on me, and being of Jewish faith, I had to give the eulogy. And I performed the eulogy, and it was on a Sunday morning at 11 o'clock. I asked my nephew if he would drive up to New

York and hand this envelope to Mel, at this particular location. He picked his girlfriend up, and he went out for a ride, and he delivered this envelope, and he went to the room. He was sitting there with a gentleman, the skinny guy, he said—he didn't know [239] who he was. And Mel went up behind the coat hanger. My nephew handed him the envelope, "Goodbye," and that's the last we saw of Mel—that's the last of the——

Mr. NEAL. You should know the date you performed, did you say, the eulogy——

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL [continuing]. For your special counsel?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. What date?

Mr. ERRICHETTI. Well, you should have the date book of my secretary that says every time I went someplace, and if it has to be deciphered, she would be happy to decipher it for you. I do not have the book. I have not had the book since they subpoenaed them back in 1980.

Mr. NEAL. Well, can you find out tonight when—you are saying that you gave your nephew an envelope containing $3,000 for Mel Weinberg on this Sunday on which you delivered the eulogy for your special counsel——

Mr. ERRICHETTI. Before I leave, sir.

Mr. NEAL [continuing]. And that it is your information—obviously, you told your nephew to go, give it to Weinberg——

Mr. ERRICHETTI. To give it to him; yes.

Mr. NEAL. Right. And did you tell your nephew where Weinberg could be found?

Mr. ERRICHETTI. Yes, sir.

[240] Mr. NEAL. All right. And this all occurred, then, on a specific date we can identify?

Mr. ERRICHETTI. Yes, sir.

Mr. NEAL. Will you provide us that date tonight?

Mr. ERRICHETTI. Before I leave, sir, I will make a phone call to my secretary and see if she has it, and I will give it to you right here, then.

Mr. NEAL. OK, thanks.

Mr. WHEELER. Mr. Errichetti, I am basically done. Mr. Neal is going to ask you some questions about the Senator Williams transaction, but I do want to ask you 30 seconds' worth more.

Before you became the Mayor—you became Mayor, you said, in 1971?

Mr. ERRICHETTI. Seventy-three.

Mr. WHEELER. Seventy-three. What did you do before then?

Mr. ERRICHETTI. Director of Public Works, appointed 1965 until 1973.

Mr. WHEELER. And what did you do before that?

Mr. ERRICHETTI. I was purchasing agent, 1961-62 to 1965.

Mr. WHEELER. For the city?

Mr. ERRICHETTI. Yes, sir.

Mr. WHEELER. And what did you do before that?

[241] Mr. ERRICHETTI. Real estate, with Frank A. Juourn and Co.

Mr. WHEELER. For how long?

Mr. Errichetti. Three years.

Mr. Wheeler. Excuse me?

Mr. Errichetti. Three years, I believe.

Mr. Errichetti. And before that?

Mr. Errichetti. With the family business. My brother is in the drycleaning business and has been since 1938, and I was associated with him.

Mr. Wheeler. In 1979, did you consider yourself independently wealthy?

Mr. Errichetti. Independently wealthy?

Mr. Wheeler. Right.

Mr. Errichetti. No. I did very well in the stock market in 1979. I made $75,000 by buying, selling, and whatever, stocks. My salary was $48,000 a year as mayor and senator. Was I independently wealthy? No.

Mr. Wheeler. Was that the best financial year you had ever had up to that point?

Mr. Errichetti. I think so.

Mr. Wheeler. Thank you very much.

Senator Huddleston. Before you get into that, let me just, about the gifts, were all of the gifts you provided solicited by Mel Weinberg?

[242] Mr. Errichetti. All of them, sir.

Senator Huddleston. On your own initiative, you did not provide anything?

Mr. Errichetti. Not—no, sir.

Senator Huddleston. And do you have any notion of what happened to any of them?

Mr. Errichetti. I think he played Santa Claus after that—meaning he gave the gifts either to himself and/or to his wife, or his girlfriend, or whoever.

Senator Huddleston. You "think." Do you have any evidence to support that? Do you know of anybody that showed up with one of them, besides——

Mr. Errichetti. Yes. ABC-TV Network has the video pictures of all of them, in his home.

Senator Huddleston. But you have learned that since?

Mr. Errichetti. Yes, sir.

Senator Huddleston. Thank you.

Mr. Neal. I want to be brief on this. We have taken too much of the Senator's time already, but just a few questions. Now, bear with me and be as brief as you can, OK?

Mr. Errichetti. Yes, sir.

Mr. Neal. And, basically, I want you to tell me if I am correct. You met—Senator Williams came to your office on January 3, 1979?

[243] Mr. Errichetti. Yes, sir.

Mr. Neal. At that time, you alluded or mentioned to him that there were investors available; right?

Mr. Errichetti. Yes, sir.

Mr. Neal. And what did he say about Feinberg, quickly?

Mr. Errichetti. "Get ahold of Alex."

Mr. Neal. "Get ahold of Albert?"

Mr. Errichetti. Alex.

Mr. **Neal**. Did you call Alex?

Mr. **Errichetti**. Yes.

Mr. **Neal**. Did you tell him about Abdul Enterprises?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. Now, then, on January 11, you introduced Mr. Feinberg and Sandy Williams to McCloud, the guy who was playing McCloud; is that right?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. On that date, privately, you said to McCloud that Feinberg was Williams' bagman; is that correct?

Mr. **Errichetti**. If that is what it says; yes.

Mr. **Neal**. You had gone over there.

Mr. **Errichetti**. Yes; we had gone over there.

Mr. **Neal**. On January 20, you had a conversation in which you tell McCarthy/McCloud that Williams was pleased with how McCarthy and Weinberg handled Feinberg and Sandy Williams?

Mr. **Errichetti**. If I said that, sir, it was only because [244] Mr. Feinberg may have related to me and said, "They are gentlemen, they are professional," or whatever and I may have related to them, "Yes."

Mr. **Neal**. Did you talk to Senator Williams—when did you next talk to Senator Williams after your meeting on January 3, 1979?

Mr. **Errichetti**. May or June.

Mr. **Neal**. May or June?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. You did not talk to him at that time?

Mr. **Errichetti**. Not to—I don't really recall.

Mr. **Neal**. Not from January 3, 1979, until May or June of 1979?

Mr. **Errichetti**. I do not recall speaking to him, sir.

Mr. **Neal**. You were not on the boat trip on March——

Mr. **Errichetti**. I am sorry, I am sorry—talking, but that was not just general conversation. Picture-taking, or whatever have you, on the boat, and that was it.

Mr. **Neal**. Did you see him on March 23 or 24, 1979, on "The Left Hand", or around "The Left Hand?"

Mr. **Errichetti**. Oh, yes.

Mr. **Neal**. The boat?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. Did you have any private conversation with him at that time?

[245] Mr. **Errichetti**. No, sir.

Mr. **Neal**. Did Alex Feinberg ever tell you that Senator Williams was going to have a piece of this mine?

Mr. **Errichetti**. You are ahead of yourself, sir.

Mr. **Neal**. Pardon me?

Mr. **Errichetti**. To answer your question; no.

Mr. **Neal**. Well, you tell me how I am ahead of myself. I am trying to do this quickly.

Mr. **Errichetti**. Well, basically, starting with the mine, Sandy was trying to recover this iron ore for a profit, that had been a dead mine for many a year. I think it was "Piney Run," or something. And all of a sudden, lo and behold, there is another company involved, meaning they, meaning Weinberg and company, recommending that they should buy, along with this mine, the American

Cyanamid plant in New Jersey—or, I am sorry—Savannah, Ga. Okay.

Now, all of a sudden, it went from $40 million to $100 million, and not by Pete, Senator Williams' initiative and/or anyone else's but meaning Weinberg and company, for a better word.

They had met, and they went down to the plant—"they" meaning Feinberg and Weinberg and whoever. Now, I am just giving you this as secondhand, because I was not privy to it, but as I heard that they had gone down.

Mr. NEAL. Who did you here from?

[246] Mr. ERRICHETTI. I think it was Alex Feinberg. And Alex was excited, because now we were getting involved with not only a mine that was either depleted, or productive, but also a working, full, national corporation.

Basically, I was called in, and then Weinberg called me in—and I am not sure whether it was May or June—and said, "Look, Alex is not doing the job in regards to getting Senator Williams involved, because without him there will be no loan."

I said, "Who is asking for a loan now?" meaning, how does that come in, meaning this plant. "The last I heard was back in January, they were looking for a mine."

"Well, it has gone beyond that. You haven't been around, so you don't know. You have been busy. But we are at this stage, and you have got to get Pete off his dead butt, because that is the only way it is going to become a reality, with his participation, or it is not going to happen. And you are going to become president of this particular company in Savannah, and you're going to make a salary, and you are going to have airplanes," and God knows, whatever, the same old carrot, again.

So I get ahold of Alex, and I say, "Alex, what is the problem?"

He says, "Well, Pete's busy, and I don't know how to convey with him the urgency of this particular operation."

[247] In the meantime, apparently, Pete calls the American Cyanamid plant in Savannah, and the next thing, I get a phone call from Weinberg, screaming bloody murder, "Tell Senator Williams to stay away from the plant in Savannah, because there are two buyers negotiating that want to buy that plant, versus one. So, from henceforth, he is not to converse with anyone in that particular plant, because he will mess up the deal for the $100 million." All right.

I visited Pete on a couple of occasions and tried to convey to him what Weinberg and company—Abdul, for a better word—what they were looking for in regards to contracts with the Government. He said, "Well, that's not my bag; I'm a Senator. But you could be a salesman"—meaning me—"and you can go in and open some doors and see if there is a possibility to bid on some titanium or some other things that are of that use, for the military." Okay.

And I gave him some harsh language, as, you know—not to Senator Williams, but relating back that I grabbed him by the neck and whatever, you know, that kind of thing, which you have tapes of. And, basically, Pete, seeing the urgency of the meeting where they were wanting to fund this particular project—and I honestly believe with all my heart that Senator Williams was trying to help

Sandy Williams and becoming a reality and getting him moving in regards to a solid business.

[248] Mr. **Neal**. And not help himself?

Mr. **Errichetti**. That is something else.

Mr. **Neal**. All right. Go ahead.

Mr. **Errichetti**. Now, we have a meeting in which I become president. They elect me president. And, I, with everyone's knowledge—I think everyone knew—I receive 27 percent of this $100 million corporation. And it was 9 percent for me, 9 percent for Feinberg, 9 percent for DeVito. That was their participation—I am sorry, did I say—DeVito, Weinberg, and me; 27.

Pete's shares were to be held by Senator—I am sorry—the secretary or partner of Alex Feinberg. I think his name was Evoy, I think. He acted as secretary at the meeting, and he drew the papers up, made the corporation papers in Virginia and Georgia, and sets of papers and whatever have you. So there was a bona fide meeting to that effect, and in the corner sat Feinberg, Weinberg, and DeVito, and I think on one occasion, I think Ernie Poulus or someone was also there.

When it came time to disburse the shares, they said to me, "You have to give the shares to Senator Williams."

I said, "What do I have to give them to him for? You are up in New York. You give them to him. He is going to go, leaving for a trip overseas."

"No, no, no, no. You are the president, and you have got to hand these shares to him."

[249] So, lo and behold, I got on the phone back and forth to Senator Williams, and I think he left on Northwest Airlines, for whatever it was, and at the airport—his wife was there and another gentleman, a friend of his, and Pete, and I gave him the shares. Okay.

Mr. **Neal**. Now, as I have sensed what you are saying here, this is different with Senator Williams than the others. They are telling you with Senator Williams, he has got to make promises; he has got to get contracts.

Mr. **Errichetti**. Yes. That is on the videotape, sir.

Mr. **Neal**. But this is not play-acting with Senator Williams, now?

[250] Mr. **Errichetti**. Oh, no, it was all play-acting. No, no. The same scenario. I—in fact, they may even have a tape where it says, Pete Williams is saying it is all bullshit, to Senator Williams directly, never mind me.

I conveyed that it is all play-acting, the same scenario that was the other gentlemen, meaning Myers or whoever. It was not a question of him—I think he was caught up in the $100 million operation.

Mr. **Neal**. To make a long story short, you are saying that Senator Williams' involvement is play-acting, like the rest of them?

Mr. **Errichetti**. He was coached by me and Mel Weinberg.

Mr. **Neal**. Any other time other than that on the record?

Mr. **Errichetti**. Sir?

Mr. **Neal**. Any—did you coach Senator Williams at any time other than what we have a transcript of?

Mr. **Errichetti**. Sure.

Mr. **Neal**. When?

Mr. **Errichetti**. In his office, down here in Washington.

Mr. **Neal**. When?

Mr. **Errichetti**. I guess, prior—sometime in June, I think—and again, I am not—I think it is June.

Mr. **Neal**. One more question. The toll records show that on April 1, 1979, there is a call from Weinberg's number [251] to your number in Camden, and the call lasts 8 minutes; April 1—now this is not Mr. Weinberg's record. This is the toll record. Did you talk to him on April 1, 1979, briefing him?

Mr. **Errichetti**. It could have been possible?

Mr. **Neal**. Pardon?

Mr. **Errichetti**. Possibly.

Mr. **Neal**. What was it about? Now, this is after you get back from Long Island, allegedly sharing the bribe money with him.

Mr. **Errichetti**. Well, I do not have any recollection of it because there are so many of them. Was this taped, sir?

Mr. **Neal**. Well, you know, I can give you two calls, one of which was taped. There was a call on March 31, 1979, between—when Weinberg calls you. That is the night of the MacDonald money, OK? Are you with me?

Mr. **Errichetti**. That is the one I am claiming that he spoke to me.

Mr. **Neal**. Just follow me. There is a tape of a conversation between you and Mr. Errichetti, in which this conversation you have related took place. You say that was March 31, the evening of March 31?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. Mr. Weinberg says that was the afternoon of April the 1st. Now, you say is it recorded. There are two [252] conversations. One of them was recorded. You are saying it took place on the evening of March 31. The Government says it took place on the afternoon of April 1. So you tell me if it was recorded.

Mr. **Errichetti**. Sir, I can tell you that the one that has my voice, me telling him exactly what I told you in this room, and he has got it down for 2:30 in the afternoon on Sunday, and I am telling you it was on a Saturday night.

Mr. **Neal**. You don't have any recollection. There were two calls, March 31—forget the taping for a minute—March 31 at 8:57 or 8:58, that lasted 4 minutes.

Mr. **Errichetti**. All right.

Mr. **Neal**. There is another telephone call on April 1, starting at 4:54, that lasted—well, there was one on March 31 that lasted 4 minutes. There was a call on April 1, starting at 4:54, that lasted 8 minutes. You are saying that the transcript of the tape we have got was of the 3-31, March 31, evening call.

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. You do not recollect what the April 1 afternoon call was about?

Mr. **Errichetti**. No, I do not, but I assume I spoke to him. I assume I was home from New York by that time.

Mr. **Neal**. OK. Who was your stockbroker in 1979?

Mr. **Errichetti**. Who was he? I think it was the Smith [253] Company, I believe. But it is all a matter of record, so——

Mr. **Neal**. Record, where?

Mr. **Errichetti**. Smith—no, it wasn't Smith—in Philadelphia. The broker's name was Charles Matthews.

Mr. **Neal**. Charles Matthews?

Mr. **Errichetti**. Yes, sir.

Mr. **Neal**. Is he still in business there?

Mr. **Errichetti**. I don't believe so—I don't know. I can't afford the stocks——

Mr. **Neal**. What is the company's name?

Mr. **Errichetti**. I think it was Smith.

Mr. **Neal**. Smith Company?

Mr. **Errichetti**. Smith and Company, I believe.

Mr. **Neal**. Do you have any objection to us getting your records from that company?

Mr. **Errichetti**. Absolutely not.

Mr. **Neal**. So you are saying now that there will be a record of this. You are saying now that you are giving us permission to get those records?

Mr. **Errichetti**. Certainly, certainly.

Mr. **Neal**. Do you have records?

Mr. **Errichetti**. Copies of it? I may.

Mr. **Neal**. Do you have any objection to furnishing us those records?

Mr. **Errichetti**. No, I do not.

[254**]** Mr. **Neal**. Sir, that is all I have.

Senator **Huddleston**. One question on the urging to bring Senator Williams deeper into the picture. Did that all come from Mel Weinberg?

Mr. **Errichetti**. To me, it was; yes, sir.

Senator **Huddleston**. With no other person, DeVito, or any other person connected, insisting that you get Pete Williams?

Mr. **Errichetti**. My memory was Mr. Weinberg, sir.

Senator **Huddleston**. That is all I have.

Are there any other questions?

Mr. **Wheeler**. No further questions, Senator.

Senator **Huddleston**. If there are no further questions, then, the committee is adjourned for today, and we will excuse the witness, Mr. Errichetti.

Mr. **Errichetti**. Thank you, sir.

Senator **Huddleston**. We convene again at 10 o'clock tomorrow morning, the same place.

[Whereupon, at 4:56 p.m., the committee was adjourned, to reconvene Thursday, September 16, 1982, at 10 a.m.]

[1] REDACTED COPY OF EXECUTIVE SESSION HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

THURSDAY, SEPTEMBER 16, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 10:15 a.m., in room 357, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman) presiding.

Present: Senators Mathias, Huddleston, Rudman, Simpson, and Leahy.

Staff present: James F. Neal, chief counsel, and Malcolm F. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

Pursuant to the previous action of the committee, this is scheduled as a closed hearing. The Chair wishes to advise the members of the committee that I am in receipt of a letter from Richard A. Dienst, who advises that he is the counsel retained to represent Melvin Weinberg in regard to his appearance scheduled before the committee on Thursday, September 16. Mr. Dienst requests that any questions asked [2] of Mr. Weinberg be posed in open session. Now, that request is a proper one, which is contemplated by section 2.2 of the committee rules, which provided that, "Any witness called for a hearing may submit a written request to the Chairman no later than 24 hours in advance, for his examination, to be in closed or open session."

So the first matter which comes before the committee this morning is the request of Mr. Dienst to open the doors.

Is there any discussion of this request?

Perhaps, Mr. Dienst, you might want to say a word in support of your request.

Mr. DIENST. Senator, the only thing that I would submit to the committee is that Mr. Weinberg has testified at numerous trials in numerous districts; there have been a number of so-called due process hearings following those trials, covering the areas which are the subject matter of this select committee's inquiry. He has testified under oath at all those proceedings. He is prepared to testify under oath here.

I do not believe that there will be any substantial variances in the questions that may be asked of Mr. Weinberg that have not already been asked by the myriad of lawyers representing the various defendants in the criminal actions. And, based upon that, and based upon the fact that people have a right to know what goes on, Mr. Weinberg requests that any questioning of him be conducted in an open session.

[3] Senator MATHIAS. Counsel, do you want to comment?

Mr. NEAL. Thank you, Mr. Chairman.

The committee voted to close this session as well as several other sessions on August 18, 1982. Among the reasons cited were: One, the fact that this is a study of undercover operations, it is not per se an Abscam investigation; two, the testimony of Mr. Weinberg and others could impact upon cases now pending in court and could adversely affect those cases if the testimony became generally known at this particular point; three, the public does have a right to know, and the public's right to know will be honored by a final report, at which I assume, barring some overriding national or domestic security situation, the testimony will be disclosed to the public.

Those were the reasons that the committee voted to close the session initially. We have heretofore, and are prepared to today, grant certain immunities depending upon the conditions precedent being met. Those immunities have been, and if required today, will be, use immunities. In order to allow any prosecution to go forward, it is necessary therefore to keep confidential the testimony in order that the testimony compelled by these immunities not affect any subsequent prosecution in this matter of any witness who appears.

So that was the reason, Mr. Chairman, that the committee voted, as well as the fact that we will discuss several [4] individuals whose rights of privacy could be invaded by the testimony here, Mr. Chairman. You will remember in open sessions, even, we used code words or names, and while we were capable of carrying on that way, it was somewhat difficult. In a closed session, we have much more freedom to get at the issues in dispute.

Mr. DIENST. May I just respond to that, Senator, if I may?

Senator MATHIAS. Certainly, Mr. Dienst.

Mr. DIENST. The remarks of Mr. Neal, in my opinion, do not provide for the closing of the session pursuant to rule 2.3. If there are specific areas that Mr. Weinberg may be questioned about which would or may deal with the character or reputation of some individual other than an individual who has already been convicted by various jurists throughout the United States, then perhaps under those circumstances, a portion of the session may be considered closed. But again, in accordance with the committee's own rules, the hearing should be open to the public, except under very specific circumstances which, I most respectfully submit, Mr. Neal has not set forth with any great degree of clarity.

Senator MATHIAS. Is there any discussion?

Senator HUDDLESTON. Well, Mr. Chairman, I would just say, I think the action taken by the committee previously was taken after due deliberation and consideration of all the [5] factors involved. We have operated in closed session with other witnesses who operated in the similar capacity, although not totally akin to Mr. Weinberg, and I think the previous action of the committee should be sustained.

Senator **Mathias**. If there is no further comment, we will proceed to vote on the request of Mr. Dienst to open the doors.

Mr. **Dienst**. May I just say one thing further, Senator, if I may? I do not want to wear out my welcome right off the bat, but it is our position that Mr. Weinberg was an employee of the Government at the time these undercover operations were proceeding. And it has been my understanding that other Government employees, especially the Federal Bureau of Investigation agents, have testified at open session. I do not believe that Mr. Weinberg's position should be considerably different than the other Government employees who testified.

Mr. **Neal**. I would respond by saying that at the request of the Federal Bureau of Investigation, we interviewed a number of their agents who were regular special agents, and did not take their testimony in open session, at the request of the FBI. Merely, we interviewed them for information. The only FBI agents who testified were Supervisory Agent Good, a level above the special agent; supervisory agent at Headquarters, Michael Wilson, and the Assistant Director of the FBI, Oliver Revell.

[6] Mr. Chairman, with respect to the agents, the regular special agents, we honored the FBI's request and took their information in other than a public session.

Mr. **Dienst**. Mr. Neal, may I ask a question? Certainly, the FBI made no request one way or another regarding Mr. Weinberg's status, have they?

Mr. **Neal**. Mr. Dienst, you are mistaken on that. They made several requests to us. First, they requested we not call Mr. Weinberg. Second, they stated that if we called Mr. Weinberg, they would just as soon, to use their words, it be in executive session, and third, that they would like one of their representatives to be present. We rejected their first request that we not call Mr. Weinberg.

Mr. **Dienst**. I noticed that.

Mr. **Neal**. We honored their second request—or, we acknowledged their second request—that they would just as soon have it in executive session; and we rejected their third request that a representative of the FBI be present. So that is really the state of affairs.

Senator **Mathias**. If there is no further discussion, the Chair would note that under rule 3.2., a quorum is present, three members constituting a quorum for the conduct of any committee business other than a final vote on reporting.

Therefore, all in favor of granting the request of counsel for Mr. Weinberg, signify by saying aye.

[7] [No response.]

Senator **Mathias**. There is a proxy here from Senator DeConcini, who wishes to be recorded as opening the meeting.

All opposed to granting the request will signify by saying aye.

[A chorus of ayes.]

Senator **Mathias**. And I would note that in addition to votes cast verbally, we have the proxy of Senator Inouye, who hereby extends his proxy to vote to receive the testimony of Mr. Melvin Weinberg in a closed session.

And I would vote "No."

So the vote would be 5 to 1 to remain in closed session.

Now, Mr. Weinberg, have you received a copy of Senate Resolution 350 and the committee's rules?

Mr. WEINBERG. That is correct.

Senator MATHIAS. You are familiar with the fact, then, that your testimony shall be given under oath today?

Mr. WEINBERG. That is correct.

Senator MATHIAS. If you will stand and raise your right hand, I will administer the oath.

Do you swear that the testimony that you are now about to give this committee will be the truth, the whole truth, and nothing but truth, so help you, God?

Mr. WEINBERG. I do.

[8] Senator MATHIAS. Counsel, will you begin the interrogation?

Mr. NEAL. Thank you, Mr. Chairman.

TESTIMONY OF MELVIN WEINBERG

Mr. NEAL. You are Mr. Melvin Weinberg?

Mr. WEINBERG. That is correct.

Mr. NEAL. And for a number of years, you have been an informant for the FBI?

Mr. WEINBERG. That is correct.

Mr. NEAL. Including in those informing operations, an undercover operation known as "Abscam"?

Mr. WEINBERG. At the time, I did not know the name.

Mr. NEAL. Do you now know that the operation under which you were performing was given the name of "Abscam"?

Mr. WEINBERG. That is correct.

Mr. NEAL. Do you know Mr.—and former mayor—Angelo Errichetti?

Mr. WEINBERG. That is correct.

Mr. DIENST. Excuse me, Mr. Neal. Before we proceed any further, I would like the record to note that Mr. Weinberg has not raised, nor does he intend to raise, any fifth amendment privilege. He seeks no immunity that may be conferred by this committee and will answer each and every question placed to him under those circumstances.

Mr. NEAL. Thank you, Counsel.

[9] Mr. Weinberg, when did you first start acting as an informant for the FBI?

Mr. WEINBERG. I believe it was in 1965. I am not sure of the date.

Mr. NEAL. How did that come to pass?

Mr. WEINBERG. I met an agent, Bill Roselli. At the time, I was dealing with an organized crime guy named Tony DeGauk, and the other people—organized crime was the Genovese family—and they approached me at the time.

Mr. NEAL. When you say "they" approached you, you mean a representative of the FBI approached you?

Mr. WEINBERG. Well, they seen me meet with DeGauk one night out in Brooklyn, and they came to speak to me what I was doing with him. At the time I was getting a union for him, for the pressers and the cleaning stores. And I showed them the certificate they gave me to form the union.

Mr. **Neal**. How long did your activities as an informant continue as a result of that?

Mr. **Weinberg**. I was not off, I believe, until 1977 or 1976.

Mr. **Neal**. Seventy-six or seventy-seven.

Mr. **Weinberg**. Yes.

Mr. **Neal**. What caused you to go off at that time?

Mr. **Weinberg**. Bill Roselli came to me and told me that he can't deal with me anymore, because I am under investigation.

[10] Mr. **Neal**. Under investigation?

Mr. **Weinberg**. Right.

Mr. **Neal**. And were you later arrested, charged and convicted as a result of that investigation?

Mr. **Weinberg**. I pleaded guilty in 1977.

Mr. **Neal**. After pleading guilty—and I will run through this quickly—after pleading guilty, you got in contact with the FBI again, I believe?

Mr. **Weinberg**. No, I did not.

Mr. **Neal**. Did they get in contact with you?

Mr. **Weinberg**. They got in contact with me.

Mr. **Neal**. And an arrangement was made as a result of that contact for you to resume your activities as an informant for the FBI?

Mr. **Weinberg**. No, not exactly that way. In 1977, I got another person in trouble with me, and I copped a plea. For the plea, to get this other person off, I worked on four cases. When I had finished the four cases, I was free, and they did come to speak to me at the sentencing, in front of the judge, and the judge gave me 3 years' probation. After that, they came and asked me would I set up an operation.

Mr. **Neal**. Now, that operation, your agent that started working you or running you, whatever it is called, was a Mr. John McCarthy?

Mr. **Weinberg**. I think it was Jack McCarthy.

[11] Mr. **Neal**. Jack McCarthy?

Mr. **Weinberg**. Right.

Mr. **Neal**. And his supervisory agent was John Good?

Mr. **Weinberg**. At the time, yes—excuse me, sir. The guy I was dealing with originally was Myron Fuller, and then McCarthy took over.

Mr. **Neal**. All right. Now, what period of time was it when Mr. McCarthy took over?

Mr. **Weinberg**. Well, I met him in 1977. I believe it was sometime the beginning of 1978 that he took over.

Mr. **Neal**. What was the object, as you understood it, when you first got into this operation? Now we are talking about the operation, for the record, that became known as "Abscam."

Mr. **Weinberg**. Right. In February 1978—or actually, since they had started in 1977, near the end—agent McShane approached me on paintings that were missing. They tried to get them back, and they blew it. The guy got wise and thought they were agents. He gave me the gentleman's name—his name was Castorelli. I contacted Castorelli and met with him for about 4 months for these paintings back. We finally got them back. I received a $30,000 reward from the insurance company at the time. That was on February 21, 1978.

After that, they approached me about setting an operation up for recovering stolen paintings, which I can get reward money from insurance companies, and any type of white [12] collar crime that we could come into.

Mr. **Neal**. Any type of white collar crime you could come into?

Mr. **Weinberg**. Right.

Mr. **Neal**. OK. Did you develop a cover story or scenario for that operation?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. And we have heard enough about that, and I will not spend a lot of time with it, but that was the "Abdul Enterprises" cover?

Mr. **Weinberg**. Right. The original name that was picked was Kambir Abdul Rahman.

Senator **Mathias**. Say that again.

Mr. **Weinberg**. Kambir Abdul Rahman. He was a real Arab I knew. He was pretty wealthy. So they changed the name to Abdul, I think it was Rahman Abdul, and they formed a corporation called Abdul Enterprises, which I believe was formed sometime in July or June 1978.

Mr. **Neal**. Now, again, to move on, from that point on, you posed as a representative of this wealthy sheik and his corporation known as Abdul Enetrprises; is that correct?

Mr. **Weinberg**. I was the financial adviser for Abdul Rahman, and Jack McCarthy was the chairman of the board.

Mr. **Dienst**. Excuse me, Mr. Neal. May I just ask that my client be given some more water, please?

[13] Mr. **Neal**. Yes.

Mr. **Dienst**. Sorry to interrupt.

Mr. **Neal**. Mr. Weinberg, one thing that has interested us here is, you have this business going now, and you have this story line; do you follow me?

Mr. **Weinberg**. Right.

Mr. **Neal**. What are you looking for? I know you are looking to catch crooks, but what do you put out as the bait?

Mr. **Weinberg**. On the con game, what you do is—the greatest way to explain it is, you got a honey pot, and all the flies come to it. What you do is, you spread out that you have the money to invest. Now, legitimate people—I am not saying none of them come—you will get one or two legitimate people who come to you. The majority of people that come to you are other con people, con men, who are looking for money from a client to make a deal.

Mr. **Neal**. Why do you say—if you have got money to invest, why wouldn't legitimate people come to you who would need money?

Mr. **Weinberg**. Because a legitimate person would go to his bank. He would not come to a stranger.

Mr. **Neal**. And you put out the word that you've got money to invest; is that correct?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. And then you wait and see what happens?

[14] Mr. **Weinberg**. No. In the beginning, I knew some of the con men—Sonny Santini, who has since been indicted; Ron Sabloski, who has since been indicted—and we knew some of the deals that they were doing. Another guy was Brookhaven Mortgage Co.,

which we knew the mob was trying to buy in. So, word spread from one to another, and they they started coming in.

Mr. NEAL. What did they want when they first came in?

Mr. WEINBERG. Some wanted to sell us securities; some had CD's, some had land deals. Like, one deal came in, it was from a big resort out in Hauppauge there, that the Teamsters owned, Cody. And the Government came after Cody to get rid of it. They needed money to get rid of it, because they were going to be indicted. And they came to us.

Mr. NEAL. All right, now, at this period of time, we are talking now about in mid-1978?

Mr. WEINBERG. That is correct.

Mr. NEAL. All right. At that time, who did you report to?

Mr. WEINBERG. Well, at that time, I was working in Florida with Gunnar Askeland, and I was working up North with Jack McCarthy.

Mr. NEAL. Were you reporting to both of those people?

Mr. WEINBERG. That is correct.

Mr. NEAL. Were you also having discussions with Mr. John [15] Good?

Mr. WEINBERG. On and off. I did not see John Good that much, because actually, Abdul was really not getting into anything at the time that they had meetings. I met him maybe two, three times in the beginning there. I used to go up to the RA and ask him what we are doing, and they would give him a report of what we are doing.

Mr. NEAL. Any other representative of the Government that you were having conversations with during this period of time?

Mr. WEINBERG. I believe one time, McCarthy took me down—I do not know exactly what the period of time was—to meet Thomas Puccio, because he wanted to see about getting me on the witness protection program in case anything happens. And I spoke to Thomas Puccio, I would say, about 20, 25 minutes, and that was it, and I told McCarthy I did not want it.

Mr. NEAL. All right. Other than that, were you talking to any other representative of the Government?

Mr. WEINBERG. No.

Mr. NEAL. OK. So it was Good, rarely; McCarthy and Askeland——

Mr. WEINBERG. No. Now, you have got to remember, Mr. Neal, that in the beginning, we did not have—it actually was not really set up. I believe we got the funding for it in May or June 1978. It took us time to get it set up. We were [16] meeting with people before that. We were using an office that was loaned to us where the RA's building was. So we were dealing with people just gathering intelligence information.

Mr. NEAL. Now, I understand that, Mr. Weinberg. The operation was approved in July 1978.

Mr. WEINBERG. Was it July?

Mr. NEAL. So let me direct all my questions to after the approval in July 1978, OK?

Mr. WEINBERG. After the approval, when it was, then everything, like I said, went through John Good, the office and all set up. That's when I started meeting him.

Mr. **Neal**. All right. So then, after July 1978, you were conversing regularly with Askeland, McCarthy, and Good—would that pretty well do it?

Mr. **Weinberg**. Well, I was dealing regularly with McCarthy and Askeland, but not every day with John Good.

Mr. **Neal**. But frequently?

Mr. **Weinberg**. I would see him at least once a week or so.

Mr. **Neal**. All right. During this period of time, was there any suggestion that this might be an operation aimed at political figures?

Mr. **Weinberg**. No. I had no idea on political figures at all.

Mr. **Neal**. No idea about political figures.

Mr. **Weinberg**. No.

[17] Mr. **Neal**. When did this matter turn to political figures—this operation?

Mr. **Weinberg**. Well, somewhere, I believe it was 1978, Gunnar had an operation running down in Florida with a fellow named Meltzer, and McCarthy sent a letter to Meltzer to use—they were trying to get—which actually did not have anything to do with us; we were not involved with it. You could actually say that was the first politician that, you know, they were thinking about, say. He was looking for some kind of zoning, and McCarthy sent—I had never seen the letter—to him, stating that we financed and opened the office, or whatever it said; I never seen it, like I said. And that was the first political figure, actually that you could say that came into the operation.

Mr. **Neal**. [deleted.] [1]

Mr. **Weinberg**. No. I believe he was councilman or something down there.

Mr. **Neal**. All right. When did you first start talking about political figures?

Mr. **Weinberg**. Well, I believe the first time it was actually brought up to go into political—we spoke before about—well, no, it was Senator Williams.

Mr. **Neal**. Senator Williams?

Mr. **Weinberg**. Right.

Mr. **Neal**. Well, that was in 1979.

[18] Mr. **Weinberg**. Right. That would be the first one.

Mr. **Neal**. You had a conversation on September 13 with a man named Weiss. Do you recollect that?

Mr. **Weinberg**. No—If you are talking about Weiss, if I remember it right, I believe that was about the same one we were talking with Meltzer.

Mr. **Neal**. Was with Meltzer?

Mr. **Weinberg**. That is the—Weiss worked for Meltzer.

Mr. **Neal**. Weiss worked for Meltzer?

Mr. **Weinberg**. Right.

Mr. **Neal**. You were having a conversation on September 13 with Mr. Weiss, and you suggest that you would not take a partner—or, "We would not take a partner"—unless a politician is involved. Do you recollect that conversation?

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[1] The omission of sensitive information in these hearings is indicated by "[deleted]." For a complete explanation of why, see S. Rep. 97-682, 97th Cong., 2d Sess. V-VI (1982).

Mr. **Weinberg**. I do not recollect it, but if you will read the whole transcript, it goes back to the guy I just told you about that the letter was sent through.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. If you read the transcript, the fellow they are talking about there is the one that the letter was sent to for Meltzer to show him about getting.

Mr. **Neal**. Are you saying this conversation concerned the zoning matter down in Florida and a politician involved in zoning?

Mr. **Weinberg**. That is correct.

[19] Mr. **Neal**. Well, you are saying, and I quote, "And we own the politician, all right."

And Herman Weiss says, "Hmm."

You say, "Then, I say you've got a deal." And you go on to say, "Our game strictly is with the emir." You are talking about the man up in New York, are you not?

Mr. **Weinberg**. No. There was two emirs. After the first meeting at the Plaza Hotel, when we nearly blew it, that was with Abdul, we brought in another Arab called Yassir Habib.

Mr. **Neal**. Which one was the Florida man, and which one was the New York man?

Mr. **Weinberg**. The New York man was Abdul. The Florida man——

Mr. **Neal**. The Florida man was Habib?

Mr. **Weinberg** [continuing]. Was Habib.

Mr. **Neal**. All right. Which one are you referring to here:

> Only time he'll take a partner in, because the guy's a politician. Our game strictly is with the emir. He wants to buy for himself. Only time he'll take a partner in, because the guy's a politician.

Mr. **Weinberg**. Yes, we are talking about the guy down in Florida.

Mr. **Neal**. You are talking about the guy in Florida?

Mr. **Weinberg**. Right.

Mr. **Neal**. Well, this is not the Abscam operation; is **[20]** that correct?

Mr. **Weinberg**. That is correct. Weiss was coming up, pushing us to go ahead—in fact, Weiss brought quite a few deals to us—and he was coming up, pushing this deal that Meltzer had going with this politician down there.

Mr. **Neal**. Well, who is directing you to have this kind of conversation, because you really are saying, Mr. Weinberg, "Look, we want to get a politician involved."

Mr. **Weinberg**. Mr. Neal, you have been with the Justice Department. When you work undercover, you do not think of the words you are saying. You go along with what they are saying. Because right after that meeting, we met with two organized crime guys that Weiss brought in. So you agree with everything they tell you; you say "Yes."

Mr. **Neal**. Now, you are the one who introduces the subject, politicians.

Mr. **Weinberg**. He was talking about the guy on that piece of land down there that Meltzer was supposed to buy, and he was going to pay for the zoning. Well, if the guy wasn't going the zoning as I would say the politician, then we don't want no deal.

Mr. **Neal**. All right. So you are saying, then, that this conversation had nothing to do with Abscam itself?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Now, then, on October 6, about 3 [21] weeks later, you have a conversation with a man named Rosenberg. Do you recollect that?

Mr. **Weinberg**. I do not recollect what conversation; I had quite a few with him.

Mr. **Neal**. All right. Do you remember the first time you ever had a conversation with a Mr.—do you know a Mr. Rosenberg?

Mr. **Weinberg**. I know him.

Mr. **Neal**. When did you first have a conversation with him?

Mr. **Weinberg**. Oh, I could not tell you offhand when was the first time I spoke to him.

Mr. **Neal**. Was it in the fall of 1978? Would that refresh your recollection?

Mr. **Weinberg**. I really could not tell you.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. I really could not tell you the first time I met him.

Mr. **Neal**. All right. There is a transcript of a conversation between you and Mr. Rosenberg and Mr. Minsky. Do you know a Mr. Minsky?

Mr. **Weinberg**. Yes; they came up to the office together. That was the first time they came to the office. And there was also a woman in there, too, Ms. Snow.

Mr. **Neal**. All right. And you are talking about Atlantic [22] City at this time?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Now, is this the Abscam or the one in Florida?

Mr. **Weinberg**. That was still at the time of the Abscam.

Mr. **Neal**. So you are now back in Abscam?

Mr. **Weinberg**. Oh, Yassir was Abscam, too.

Mr. **Neal**. Well, which umbrella are you operating on when you have this conversation with Rosenberg and Minsky?

Mr. **Weinberg**. I would not know. I mean, you would have to look at the transcript and see which name I mentioned.

Mr. **Neal**. Well, I can tell you the transcript. You are talking about involvement in Atlantic City.

Mr. **Weinberg**. Right.

Mr. **Neal**. Now, would that be the Florida operation or the New York operation?

Mr. **Weinberg**. Well, it would be the New York operation, but I would not know what Arab we were using, because eventually, we moved away from using Abdul altogether, and everything was Yassir.

Now, let me explain to you the reason why——

Mr. **Neal**. Well, you can explain in just a minute. But in this conversation, is that part of Abscam or something else in this conversation?

[23] Mr. **Weinberg**. That would be Abscam, but I do not know what Arab we were using.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. That would be under Abscam.

Mr. **Neal**. All right, under Abscam. Now, in this conversation, you again bring up the need for getting a politician involved. Do you remember that?

Mr. **Weinberg**. Not offhand.

Mr. **Neal**. Well, you talk about you are interested in Atlantic City "if Rosenberg and Minsky have the 'juice'."

Mr. **Weinberg**. That is correct.

Mr. **Neal**. And in other parts of that conversation, it is quite clear that "juice" means politician?

Mr. **Weinberg**. Not necessarily would it mean politician. It would mean the "juice" to get the license, or it could mean politicians that could back you up and get the license.

Mr. **Neal**. Well, now, who directed you to get into Atlantic City and the politician there?

Mr. **Weinberg**. You play everthing by ear. You are trying to derive that we were just looking for politicians; we were not. We knew that the organized crime was in Atlantic City, and that is what we were trying to find out at the time. And we figured in order to get a license there that the gaming board—the name that was thrown out to us most of the time, the people that we spoke to, was [deleted] and we were just [24] trying to get intelligent information, and that is how you pump them.

Mr. **Neal**. All right. Now, you are saying, then, that nobody is programing you to go out and talk about politicians or getting politicians involved; is that correct?

Mr. **Weinberg**. Any meeting that we went to the first time, nobody programed us what to say. We played everything by ear.

Mr. **Neal**. You played everything by ear?

Mr. **Weinberg**. Right. And then they would listen to the tape to see which way they were going and what they were saying.

Mr. **Neal**. All right. You had another conversation with Rosenberg and a man name Eden on November 16, and there the name Errichetti comes up; is that correct?

Mr. **Weinberg**. That is correct. They told us they knew the mayor, and the mayor would do anything we wanted.

Mr. **Neal**. All right. Now, did you have a conversation thereafter with Mr. McCarthy or Mr. Good about that?

Mr. **Weinberg**. I believe Mr. McCarthy was at that meeting.

Mr. **Neal**. All right. Thereafter, did you meet with Mr. McCarthy or Mr. Good?

Mr. **Weinberg**. Mr. McCarthy was handling that directly when that came up.

Mr. **Neal**. Was the decision made then to have Mr. [25] Errichetti come in?

Mr. **Weinberg**. I do not know if it was made then. Later on in the line, I was told to contact him and set a meeting up.

Mr. **Neal**. To contact Mr. Errichetti?

Mr. **Weinberg**. No, to contact Mr. Rosenberg.

Mr. **Neal**. To contact Mr. Rosenberg. Did you contact him?

Mr. **Weinberg**. I do not know if I contacted him or if Jack McCarthy contacted him, but he was contacted, and there was a meeting set up and they met in the office.

Mr. NEAL. By this, then, has the operation turned to political figures?

Mr. WEINBERG. Not offhand, no.

Mr. NEAL. What are you going to do with Mr. Errichetti?

Mr. WEINBERG. At the time, they wanted to see what he was going to offer. They mentioned Atlantic City, he could get licenses, and it was actually turning more toward organized crime than anything else.

Mr. NEAL. But up until this time, then, you are telling us that there was no discussion in your presence, at least, of going after political figures; you were simply spinning out the scenario?

Mr. WEINBERG. When you say "political figures," at the time, if you are talking about a mayor or a councilman, we did [26] not consider them political figures. If you are talking about a Congressman or a Senator, I consider that a political figure.

Mr. NEAL. You do not consider a mayor or a councilman a political figure?

Mr. WEINBERG. Well, at the time, we didn't think of—my opinion was—that these were great political figures, because most of the local politicians were on the take, anyway. I mean, we do this all our lives.

Mr. NEAL. I am sorry, I did not hear that.

Mr. WEINBERG. Most of the local politicians are on the take anyway, so this is nothing new to me.

Mr. NEAL. Mr. Weinberg, your statement is that most local politicians are on the take anyway, that that is nothing new for you?

Mr. WEINBERG. That is correct.

Mr. NEAL. Well, how many local politicians have you bribed in you lifetime?

Mr. WEINBERG. I tried to stay away from them in my lifetime, because they only meant trouble.

Mr. NEAL. I see. What, then—you had a meeting with Mr. Errichetti, is that correct?

Mr. WEINBERG. That is correct.

Mr. NEAL. On December 1?

Mr. WEINBERG. I do not know the exact date, but we had [27] a meeting and he came up to the office.

Mr. NEAL. Let me ask some general questions before we get to that. At some point in the operation, the scenario became one that you were disloyal to the sheik. Do you recollect that?

Mr. WEINBERG. Yes.

Mr. NEAL. Did you develop that scenario?

Mr. WEINBERG. Offhand, I really do not know. They came in, me and Tony had a meeting with the mayor, and he was offering us all kinds of deals, and we could split this and split that, and we went along with him.

Mr. NEAL. Well, I understand. But how about the scenario that you are disloyal to the sheik, and you are putting out the line that you are disloyal to the sheik?

Mr. WEINBERG. No, we never put the line out with disloyal. The mayor is the one that approached us on that, and we went along with him.

Mr. NEAL. I see. Did the mayor put this line out that you were disloyal to the sheik?

Mr. **Weinberg.** Well, he offered us money, to make some money with him, and we went along with him.

Mr. **Neal.** Did you go along with the idea that you would be ripping off the sheik?

Mr. **Weinberg.** I would go along with any idea the mayor gave me.

[28] Mr. **Neal.** The mayor gave you the idea of disloyalty to the sheik; is that correct?

Mr. **Weinberg.** If you will read your tapes as they come along, you will see where the mayor says we can split some money, and we say OK.

Mr. **Neal.** You split some money?

Mr. **Weinberg.** Right.

Mr. **Neal.** All right. And you said OK?

Mr. **Weinberg.** That is correct.

Mr. **Neal.** Did you then go ahead and spin out the scenario of disloyalty to the sheik with these people?

Mr. **Weinberg.** No. The only one we ever spoke to on that order was with the mayor.

Mr. **Neal.** Just the mayor. Did you go along with the mayor on the idea that you were disloyal to the sheik?

Mr. **Weinberg.** We went along with that idea, yes.

Mr. **Neal.** All right. Now, when you say "we," you are referring to whom?

Mr. **Weinberg.** To me and Tony Amoroso.

Mr. **Neal.** So you went along with what you say was the mayor's suggestion that you were disloyal to the sheik, and "We'll make some money"; is that correct?

Mr. **Weinberg.** We went along with him because he promised to introduce us to organized crime people in Atlantic City. In fact, there is a tape—I believe it is in [29] March—where he said he met with—I forget the fellow's name—and he drove him out——

Mr. **Neal.** What fellow's name?

Mr. **Weinberg.** The organized crime guy he met with.

Mr. **Neal.** Who?

Mr. **Weinberg.** The organized crime guy the mayor met with.

Mr. **Neal.** Who was that?

Mr. **Weinberg.** I forgot the name. It is on the tape, I believe. And he told me and Tony—in fact, he wanted Tony to meet him. And he claimed he went out to a garbage dump, and they switched cars, him and Torcasio and they met this organized crime, and he said he would back us up in Atlantic City.

Mr. **Neal.** My question is, you went along with the mayor—you said the mayor proposed this scenario that you all would be disloyal to the sheik, and you would split money——

Mr. **Weinberg.** I told you——

Mr. **Neal** [continuing]. And you went along with it?

Mr. **Weinberg.** I told you I went along with anything the mayor said.

Mr. **Neal.** Was that included in "anything"?

Mr. **Weinberg.** The mayor said that we could all make money; I said "Good."

Mr. **Neal.** Fine.

[30] Now, then, the scenario was developed, was it not, that in order to get a loan—people would come to you for a loan—it was then developed that in order to get that loan, you would have to get a politician involved?

Mr. **Weinberg**. That is not true.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. That is not true.

Mr. **Neal**. That is not true?

Mr. **Weinberg**. That is not true.

Mr. **Neal**. Didn't you suggest that to—do you know Mr. Ed Ellis?

Mr. **Weinberg**. Yes.

Mr. **Neal**. Didn't you suggest that to Mr. Ed Ellis in a conversation on March 1, 1979?

Mr. **Weinberg**. Mr. Neal, you are taking the thing out of context.

Mr. **Neal**. You put it in context for me, then.

Mr. **Weinberg**. Well, I will put it in. What was said to Ed Ellis, that he wanted to build a racetrack—I think it was in Garden City—and we told him, "Do you have the 'juice' in order to build it?" and he said, "Yes." And then we went further to find out who he was talking about the juice.

Mr. **Neal**. What did you mean when you said, "You got to have the juice"?

Mr. **Weinberg**. He's got to know somebody in order to get [31] the license.

Mr. **Neal**. What do you mean, "know somebody?"

Mr. **Weinberg**. Well, if you know anything about Jersey, you just do not open a racetrack unless you——

Mr. **Neal**. Well, don't go into that. What did you mean?

Mr. **Weinberg**. I am telling you what I meant.

Mr. **Neal**. What?

Mr. **Weinberg**. If you are going to open a place in Jersey, you have got to have somebody behind you who is going to give you a license and not give you any trouble.

Mr. **Neal**. So Mr. Ellis came to you wanting a loan for a racetrack, is that correct?

Mr. **Weinberg**. Mr. Ellis came to me by Alex Feinberg; plus, Mr. Ellis came to me from an organized crime guy named Pat Amarotti, who works for the Genovese.

Mr. **Neal**. Mr. Ellis came to you wanting a loan; is that correct?

Mr. **Weinberg**. He came to us by two different parties, one through Alex Feinberg and one through Pat Amarotti.

Mr. **Neal**. My question is, Mr. Ellis came to you wanting a loan?

Mr. **Weinberg**. He wanted to borrow money to build a racetrack there, or to refinance it.

Mr. **Neal**. And you asked him, "Do you have the 'juice'?"

Mr. **Weinberg**. No I asked him in order to build—you are [32] not going to give the guy money unless he can get a license. And we asked him does he have the juice in order to get the license.

Mr. **Neal**. "Do you have the juice?"

Mr. **Weinberg**. Right.

Mr. **Neal**. Did he understand what you mean by the juice?

Mr. **Weinberg**. He understood.

Mr. **Neal**. Did you understand what you meant by the juice?

Mr. **Weinberg**. Well, I would not ask him a question if I did not understand it.

Mr. **Neal**. What did he say?

Mr. **Weinberg**. Well, I believe he said he knew some people that would give him the license. He mentioned—I am not sure, now—I believe he mentioned the Senator's name. He also said that Errichetti passed a special bill that there will be no taxes, or something.

Mr. **Neal**. Was this on the recording?

Mr. **Weinberg**. That is on the recording.

Mr. **Neal**. And why did you suggest to him that he had to have the juice in order to get the loan?

Mr. **Weinberg**. I do not remember what I suggested but—I did not say he had to have the juice. In order to finance anything—anybody can come up and ask you for money. They can **[33]** open a casino. But if you cannot get a license, what good is a casino? The same with the racetrack. He had to have the juice to get the license.

Mr. **Neal**. Right. You asked him did he have the juice.

Mr. **Weinberg**. I asked if he had the juice to get the license.

Mr. **Neal**. All right. Did you have a conversation with Mr. McCarthy or Mr. Good about that conversation before it took place?

Mr. **Weinberg**. I told you, any meeting we had, we did not know what was coming out.

Mr. **Neal**. Did you have a conversation with Mr. McCarthy or Mr. Good wherein it was discussed, "Look, when this man comes in for a loan, we want to ask him, 'Do you have the juice?' "

Mr. **Weinberg**. I believe Mr. McCarthy was at the one meeting there.

Mr. **Neal**. I am talking about before the meeting took place. Did you have a conversation about what you were going——

Mr. **Weinberg**. Before the meeting took—I had no conversation before the meeting took place.

Mr. **Neal**. Did you have a conversation with Mr. McCarthy before this taped conversation with Mr. Ellis took place?

Mr. **Weinberg**. We knew he was coming up, but we did not talk about it, what was going to be said.

[34] Mr. **Neal**. And you did not decide what you were going to say——

Mr. **Weinberg**. No, Sir.

Mr. **Neal** [continuing]. How you were going to play it?

Mr. **Weinberg**. No.

Mr. **Neal**. You just left it to go free-flowing there at the meeting?

Mr. **Weinberg**. You know, you should know if you work undercover, any meeting you have with somebody where you meet them the first time, there is no way in the world you know what they are going to say.

Mr. **Neal**. Did you say to Mr. McCarthy or Mr. Good in advance, or did they say to you, "Look, let's ask him if he got the juice"?

Mr. **Weinberg**. No. We never even talked about the meeting in advance.

Mr. Neal. So, as far as the representatives of the FBI are concerned, when Mr. Ellis comes in, you are simply going to have a conversation and see where it goes?

Mr. Weinberg. You speak to the guy and see what he is looking for.

Mr. Neal. And you know he is looking for money?

Mr. Weinberg. Well, they come up there looking for money. Anybody can look for money. What do you want it for?

Mr. Neal. You say he said he had the juice?

[35] Mr. Weinberg. It is in the transcript, exactly what was said. I do not know why you are asking me; you can read it.

Mr. Neal. Let me read you this transcript.

"MW"—that is you—"When I spoke to you down in Florida."

"Yeah."

You said, "Did you do your homework?"

"I've done my homework, but I'm not sure exactly how to do it."

What does that mean?

Mr. Weinberg. We met them down in Florida there, at, I believe it was the Ramada Inn, me and Amoroso, and he brought Pat Amarotti to the meeting. And Pat Amarotti is an organized crime guy——

Mr. Neal. Amarotti?

Mr. Weinberg. Yes——

Mr. Neal. Was that meeting recorded?

Mr. Weinberg. No, I don't believe so. It may have been. I wouldn't know.

Mr. Neal. When did that take place?

Mr. Weinberg. Oh, I haven't got the date of the meeting. But we met them at the Ramada in, and he brought another guy—I cannot remember his name——

Mr. Neal. What did you mean when he asked you if you had done your homework, and you said, "I'm not sure how to [36] do it"?

Mr. Weinberg. We found out that Ellis took money from a woman and sold her some bad stock.

Mr. Neal. You and Amoroso found that out?

Mr. Weinberg. Well, from him talking and speaking to the other gentleman, and then speaking to Pat Amarotti.

Mr. Neal. All right. What did you mean, "I have done my homework, but I am not sure exactly how to do it"? What does that mean?

Mr. Dienst. Excuse me, Senator. May I ask that if Mr. Neal is going to refer to a specific transcript, and he is going to question Mr. Weinberg regarding the transcript, may we have a copy of the transcript, so we can follow along with it?

Mr. Neal. I would be glad to. We will give you a copy, counsel. [Handing document to Mr. Dienst.]

Mr. Dienst. May we have a page reference and a line reference?

Mr. Neal. I think you can find it. My copy here does not have a page reference or line.

Mr. Dienst. Thank you.

Mr. Neal. Are you with me? Have you found it?

Mr. Weinberg. What are we looking for?

Mr. NEAL. You asked Mr. Ellis, "Did you do your homework?" in his response, "I have done my homework, but I am not sure [37] exactly how to do it." What does that mean?

Mr. WEINBERG. You will have to ask Mr. Ellis.

Mr. NEAL. Well, what did you mean, "Did you do your homework?"

Mr. WEINBERG. Well, he said that he could get a guarantee—I am trying to remember. I believe he said that he can get a guarantee to get his license.

Mr. NEAL. Now, this follows your questions about, "Do you have the juice?"

Mr. WEINBERG. It would mean if he has the juice.

Mr. NEAL. All right. And you go on now, and you say, "Who else you got?"

And he says, "I've got some others."

And you say, "All right 'cause you got, that's the most important thing."

What do you mean there?

Mr. WEINBERG. Oh, who else he's got on the payroll there that is going to get him this license.

Mr. NEAL. And then you say, "No, don't—" and he says, "Well, I take them with me."

"No, no, don't bring the guy with you, no. Tell him the guy you got."

Now, what does that mean?

Mr. WEINBERG. Well, he was going to bring a guy up to meet McCarthy, and I didn't want him to bring him up because, [38] until, in case we knew the guy, or I knew him, that we would blow the operation.

So the meeting with McCarthy, I told him to just come up and speak to McCarthy on it, without bringing the person to them. Now, maybe he brought a legitimate guy up, and the guy doesn't know what the hell he's doing.

Mr. NEAL. OK.

Then you go on and say, "How much it going to cost, right?"

And then you say, "Put it this way to him. It is going to cost $100,000."

And he says, "Right."

And you say, "You want $100,000 down for the guy."

Now, were you telling Mr. Ellis what to say to Mr. McCarthy?

Mr. WEINBERG [perusing document]. I am trying to see where that is. I believe what I was trying to tell him, which we would do, we weren't going to pay no $100,000. So if the guy wants $100,000, then make it so we only get 10 down, if he had the person.

Mr. NEAL. Is that what you are telling him?

Mr. WEINBERG. Well, I am not going to give him the $100,000 because they would never go along with it.

Mr. NEAL. But are you telling Mr. Ellis—you say, "Put it this way to him, it's going to cost $100,000."

Mr. WEINBERG. No. I believe you ar getting a little [39] mixed up there.

Mr. NEAL. How am I getting mixed up?

Mr. WEINBERG. What I am doing is setting an example; if the guy wants 100, we'll pay 10.

Mr. NEAL. So he is saying $100,000, and you are saying, "We'll pay him 10"?

Mr. WEINBERG. Well, that's what I am trying to show him, that if the guy wants 100, we are not going to pay him 100; we'll pay him a part of it now.

Mr. NEAL. And then you say, "All right, if he agrees to it, then we'll let the guy come out and meet Jack, and they'll talk together. He'll give him the thing. Then you're all set."

What does that mean, you've got your loan?

Mr. WEINBERG. No. Then he's all set that he can get his license.

Mr. NEAL. All right, but what about the loan? Does that mean he's all set for the loan?

Mr. WEINBERG. Well, if he brought a politician and paid, he'd be all set that he's going to get locked up soon.

Mr. NEAL. Pardon me?

Mr. WEINBERG. If he brought a politician out, and they paid him the money, that means that he's all set that he's going to be locked up soon.

Mr. NEAL. Going to lock up some?

[40] Mr. WEINBERG. If he brought a politician out, all right, and the agreed price was 10 grand, they'd be all set, that would be the end of it.

Mr. NEAL. You mean, there'd be a case; is that what you're saying?

Mr. WEINBERG. There'd be a case—I never promised anyone they were going to get their loan.

Mr. NEAL. But you are telling them, are you not, Mr. Weinberg, that "In order to get the loan, you're going to have to show us you got the juice"; is that correct?

Mr. WEINBERG. Anyone, in order to get—if he wants a license for any type of gambling casino, wants a license for a racetrack, or anything where it takes someone to get it—and we also told them what guarantee have they got that they ain't going to have trouble from the boys in Atlantic City, building the place.

Mr. NEAL. Mr. Weinberg, my question is this, and I won't belabor it anymore. Was it part of the scenario that when these people would come to you for a loan, you would tell them, "You've got to get a politician involved," or however you put it, "You got to show us you've got the juice"?

Mr. WEINBERG. You are putting it out of context. If they came to me and asked for money, before they can get any loan, they got to prove they can get the license, and the only way they can get the license, they need juice to get it.

[41] Mr. NEAL. And so you would bring that up?

Mr. WEINBERG. Well, if a man is asking for money, what guarantee that he is going to get the license? Under those circumstances, you know, any bank would ask the same question: What guarantee you are going to get the license?

Mr. NEAL. You would bring that up, I am saying.

Mr. WEINBERG. I brought it up to him, yes.

Mr. NEAL. All right——

Mr. WEINBERG. But wait, just hold it a second. We also knew that this guy had sold a woman bad securities, and he was going to maybe be indicted on it, and we were checking this here out from the information we got from this guy.

Mr. NEAL. And would you then meet with him before he would go in to see Jack and tell him what to say?

Mr. WEINBERG. No, I wouldn't.

Mr. NEAL. Let me read you something else here.

> WEINBERG. But I want to speak to you beforetime, you go in to see him that, make sure, you know, you have got your story right to what to tell him.

Mr. WEINBERG. That is right.

Mr. NEAL. Is it your plan to meet with Mr. Ellis and make sure he got his story right?

Mr. WEINBERG. When I said I'd meet with him—he wanted to meet with me—he wanted to make sure that he had the proper papers and everything else to bring up to show Jack.

[42-43] Mr. NEAL. Is that what you mean by this line: "But I want to speak to you beforetime, before you go in to see him, to make sure you got your story right to what to tell him"? Is that what you mean?

Mr. WEINBERG. No. What I meant there was that before he goes upstairs to check that he's got all his papers, and Jack——

Mr. NEAL. Papers?

Mr. WEINBERG [continuing]. Yes—and the main reason why we said that was because Jack was known through a few people, so it was to check out that Jack did not know the person if he brought somebody with him.

Mr. NEAL. But you did not mean that you were going to help him make up his story to tell Mr. Ellis; is that what you are saying?

Mr. WEINBERG. No. I did not ask him to make up any story for Mr. Ellis.

Mr. NEAL. But you did want to meet with him before he went up.

Mr. WEINBERG. That was the standard procedure there, to meet them downstairs——

Mr. NEAL. You would meet them downstairs?

Mr. WEINBERG. I usually met them downstairs to make sure that no one in the upstairs knew these people.

Mr. NEAL. And would you have a conversation when you [44] met them downstairs?

Mr. WEINBERG. I spoke to them downstairs, but that does not mean I would tell them anything what to say up there.

Mr. NEAL. Would that meeting be recorded when you talked to them downstairs before they went up?

Mr. WEINBERG. No, it would not be recorded.

Mr. NEAL. And that would be standard procedure?

Mr. WEINBERG. It would be standard procedure to check anyone that came to the office, because we had a problem one time. A guy came up to the office, and one of the agents there locked him up, some years back.

Mr. NEAL. Mr. Weinberg, let's talk about Mr. Errichetti a minute. Mr. Errichetti came in on December 1; is that correct?

Mr. WEINBERG. What are you talking about—in the office up there?

Mr. NEAL. Yes, Abdul Enterprises.

Mr. WEINBERG. Yes, that is correct.

Mr. NEAL. Is that the first time you ever met Mr. Errichetti?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Tell us as briefly as possible what the subject matter of the conversation was on December 1?

Mr. **Weinberg**. Offhand, I do not remember. I believe he came up for the financing or the leasing of a crane for Camden, and then the mayor started talking with Jack, and I [45] wasn't in the room all the time; I was walking in and out. And next thing you know, he was offering Jack Atlantic City.

Mr. **Neal**. That is recorded. And it is fair to say that there were a number of illegal subjects discussed at that meeting; is that correct?

Mr. **Weinberg**. I imagine so. I have not seen the transcript.

Mr. **Neal**. Now, after December 1, 1978, when was the next time you met Mr. Errichetti?

Mr. **Weinberg**. I wouldn't know. I believe he came out to the office once more, if I'm not mistaken.

Mr. **Neal**. Let me ask you this. Did you meet him on January 6, 1979?

Mr. **Weinberg**. Where at?

Mr. **Neal**. At the Blue Dawn Diner on Long Island, near Abdul Enterprises' office.

Mr. **Weinberg**. Not that I remember.

Mr. **Neal**. Not that you remember? Do you know of a place called the Blue Dawn Diner?

Mr. **Weinberg**. Yes. I have coffee there all the time.

Mr. **Neal**. Did you meet Mr. Errichetti, you and Mr. Errichetti alone, on January 6, 1979, at the Blue Dawn Diner?

Mr. **Weinberg**. Are you making a reference to a certain meeting?

[46] Mr. **Neal**. I am talking about a meeting on January 6, 1979—and I am not hung up on the date, but it was 2 or 3 days before a meeting that was taped, 2 or 3 or 4 days.

Mr. **Weinberg**. Two or 3 or 4 days before a meeting that was taped?

Mr. **Neal**. Yes, sir. Did you have a taped meeting with Mr.—you had a meeting with Mr. Errichetti; Jack McCarthy was there, posing as Mr. McCloud; it was in Atlantic City, and it was on January 9, 1979. Do you recollect that meeting?

Mr. **Weinberg**. I remember meeting in Atlantic City. Are you talking about the meeting where Jack taped them?

Mr. **Neal**. Yes, sir, $25,000 is named.

Mr. **Weinberg**. I wasn't at the meeting.

Mr. **Neal**. Do you recognize there was a meeting on that date?

Mr. **Weinberg**. Well, if you have it taped, there was a meeting.

Mr. **Neal**. All right. Now, I have a tape, and there was a meeting. Now, in reference to that, did you meet Mr. Errichetti at the Blue Dawn Diner on January 6, 1979, where you were outside for 15 or 20 minutes, and talked, I believe, in your car or his car? Mr. Errichetti got into your car with you, and you all talked for 15 or 20 minutes.

Mr. **Weinberg**. Well, if he got into my car, I don't know [47] how he did it, because I didn't have a car.

Mr. **Neal**. You had no car at that time?

Mr. **Weinberg**. No; I did not.

Mr. NEAL. Did your wife have a car?

Mr. WEINBERG. My wife had a car.

Mr. NEAL. Did you ever drive that car?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. You never drove that car?

Mr. WEINBERG. I brought that car down to Florida.

Mr. NEAL. Did you ever drive a car, that car?

Mr. WEINBERG. No; I didn't. Maybe once of twice, she was in the car with me, but she wouldn't trust me with that car.

Mr. NEAL. Did you meet with Mr. Errichetti on January 6, 1979, at the parking lot of the Blue Dawn Diner on Long Island, and he got in any car where you are in?

Mr. WEINBERG. Well, I didn't have a car. I don't know what car he could get into.

Mr. NEAL. Well, did he get in a car with you at the Blue Dawn Diner on January 6, January 7, January 5, or any time in early January 1979, did you meet privately with Mr. Errichetti?

Mr. WEINBERG. Not that I remember.

Mr. NEAL. Not that you remember.

Mr. WEINBERG. Right.

[48] Mr. NEAL. Are you saying that it did not happen?

Mr. WEINBERG. I don't remember it happened, him getting into any car that I may have had, or anything else, because I drove a pickup truck.

Mr. NEAL. All right. Did he get in a pickup truck with you?

Mr. WEINBERG. I don't remember him getting in a pickup truck with me.

Mr. NEAL. Are you saying you don't remember, then, a meeting on January 6, 1979 at the Blue Dawn Diner?

Mr. WEINBERG. And where did he go after that?

Mr. NEAL. Pardon me?

Mr. WEINBERG. Where did he—was there a meeting set up, or something?

Mr. NEAL. Fortunately, I get to ask the questions.

Did you meet with him?

Mr. WEINBERG. Well, I am trying to refresh my memory. You don't want to help me, then I can't do you any good.

Mr. NEAL. I would be glad to help you. What else can I do to help you?

Mr. WEINBERG. Where did he go after the meeting?

Mr. NEAL. I don't know where he went after the meeting.

Mr. WEINBERG. Well, you were asking the questions. He told you about that. But was he coming from a meeting or going to a meeting?

[49] Mr. NEAL. My question to you, sir: Did you meet with him?

Mr. WEINBERG. Not that I remember, ever meeting with him in the Blue Dawn Diner.

Mr. NEAL. You don't remember ever meeting Mr. Errichetti at the Blue Dawn Diner?

Mr. WEINBERG. No.

Mr. DIENST. That question has been asked, now, and answered probably five times.

Mr. NEAL. Mr. Weinberg, did you contact Mr. Errichetti by phone between December 1, 1978 and January 7, 1979?

Mr. **Weinberg**. You have got to be kidding to ask me that. How do I know if I contacted—I contacted him a lot of times by phone.

Mr. **Neal**. Following the meeting on December 1, 1979 and for the next 5 weeks, did you have a number of telephone conversations with Mr. Errichetti?

Mr. **Weinberg**. Most likely, I did. I don't know.

Mr. **Neal**. Were those recorded?

Mr. **Weinberg**. Yes; they were recorded.

Mr. **Neal**. Every one you had during that period of time was recorded?

Mr. **Weinberg**. Not every phone call was recorded. What I could record, we recorded.

Mr. **Neal**. Mr. Weinberg, did you place calls to Mr. **[50]** Errichetti between December 1, 1978 and January 6, 1979, that 5-week period?

Mr. **Weinberg**. I don't know offhand. You've got the phone catalog; it's easy to look it up.

Mr. **Neal**. My question to you is, do you have any recollection of placing such calls?

Mr. **Weinberg**. Now, you want me to remember back to 1977 or 1978, if I placed calls to Mr. Errichetti?

Mr. **Neal**. I want you to answer my question, Mr. Weinberg, to the best of your ability.

Mr. **Weinberg**. Well, I cannot remember. If you don't want to help me and show me the phone records, I cannot help you, because I don't remember if I placed calls in 1978 to him, until 1979. There were a lot of calls that were made, but I don't know the dates of when they were done.

Mr. **Neal**. All right. You remember the meeting on December 1, 1978, don't you, with Mr. Errichetti?

Mr. **Weinberg**. That's when he first came to the office?

Mr. **Neal**. Yes, sir.

Mr. **Weinberg**. I don't know if that's the date, but I remember him coming to the office the first time. I think [deleted] brought him.

Mr. **Neal**. All right. Now, do you remember following that meeting, during the month following that meeting, did you place telephone calls to Mr. Errichetti?

[51] Mr. **Weinberg**. Mr. Neal, I will tell you once more, if you want to check it out, get the phone records, look it up. I could have been in Florida at that time. I mean, if you don't want to look the records up, I can't help you.

Mr. **Neal**. Mr. Weinberg, do you have any recollection of making calls to Mr. Errichetti in the month following the meeting on December 1, 1978?

Mr. **Weinberg**. I told you, I made a lot of calls. I do not recollect—most likely, there are calls, but the phone records will show it.

Mr. **Neal**. Do you have any recollection of it?

Mr. **Dienst**. Mr. Chairman, again, this question has been asked and answered ad nauseum.

Mr. **Neal**. Mr. Chairman, I am not getting an answer from the witness.

Do you have any recollection of that?

Mr. **Weinberg**. I can't answer it, because I don't know.

Mr. **Neal**. You don't know whether you have a recollection or not?

Mr. **Weinberg**. If you will give me the phone records, I'll give you an answer, but you don't want to give me the records.

Mr. **Neal**. Do you have a recollection—and I am going to ask you again—do you have any present recollection today, as you sit there, of making telephone calls to Mr. Errichetti [52] following your December 1 recorded meeting, December 1, 1978, during the next month?

Mr. **Weinberg**. First of all, it was not my recorded meeting. I had nothing to do with the recording of the meeting. No. 2, I do not know when I made calls to Errichetti. You got the phone records. Bring the phone records out, and we can check it, one, two, three.

Senator **Mathias**. I think, Mr. Weinberg, what counsel is trying to ask you is——

Mr. **Weinberg**. He is trying to put words in my mouth.

Senator **Mathias**. No. He is asking you do you have any independent recollection, and any one of us, looking at a memorandum or a telephone log, might have our memories refreshed. What is your independent recollection?

Mr. **Weinberg**. I haven't the slightest idea, Senator. You are asking me to remember back to 1978.

Mr. **Neal**. Did Mr. McCarthy tell you to pursue Mr. Errichetti following the December 1, 1978 meeting?

Mr. **Weinberg**. I believe Mr. McCarthy called him himself a few times.

Mr. **Neal**. My question is, Did Mr. McCarthy tell you to go ahead and pursue Mr. Errichetti following the recorded meeting?

Mr. **Weinberg**. Mr. McCarthy, I explained to you in the beginning, was handling Errichetti. If he told me to call him, I called him. He was calling the shots, not me. I don't [53] remember him—if he told me or didn't tell me.

Mr. **Neal**. Were any of these telephone calls, if you made any, recorded?

Mr. **Weinberg**. They should have been.

Mr. **Neal**. They should have been recorded?

Mr. **Weinberg**. If we had tapes and were able to record them, we would have recorded them.

Mr. **Neal**. Now, as I understand it, then, you do not remember meeting Mr. Errichetti on January 6. Let me go, then, to January 8. Did you have a meeting—just you and Mr. Errichetti—at the Holiday Inn in Atlantic City on January 8, 1979?

Mr. **Weinberg**. Just me and Errichetti?

Mr. **Neal**. Just you and Errichetti.

Mr. **Weinberg**. I am trying to get which meeting that was. I think that was the meeting when Tony Amoroso came in, Rosenberg was there, [deleted] was there, McCarthy was there, the female agent was there. I hadn't had a personal meeting with him alone. There was always somebody around. In fact, my room was on a different floor than they were on.

Mr. **Neal**. Were you in Atlantic City on January 8 and 9—and January 9 was when there was a taped meeting.

Mr. **Weinberg**. If we are talking about the same meeting, I was there.

Mr. **Neal**. You were in Atlantic City?

[54] Mr. **Weinberg**. I was in Atlantic City.

Mr. **Neal**. Did you have a hotel room at the Holiday Inn in Atlantic City?

Mr. **Weinberg**. I had a hotel room in the Holiday Inn.

Mr. **Neal**. All right. On the evening of January 8, 1979, did you meet Mr. Errichetti alone, with no one else around?

Mr. **Weinberg**. No.

Mr. **Neal**. Now, then, between January 9 and January 19, did you have a number of telephone conversations with Mr. Errichetti?

Mr. **Weinberg**. I don't remember.

Mr. **Neal**. You don't remember?

Mr. **Weinberg**. I—I don't know why you won't give me the telephone log.

Mr. **Neal**. Specifically, on January 17, 1979, did you have a number of telephone calls with Mr. Errichetti?

Mr. **Weinberg**. Most likely, I had some calls with him.

Mr. **Neal**. All right, Now, then, did you meet with Mr. Errichetti at the Holiday Inn off the Long Island Expressway on the evening of January 19, 1979?

Mr. **Weinberg**. Is that the night before the payoff?

Mr. **Neal**. Yes, sir.

Mr. **Weinberg**. Mr. Errichetti called me at my home and told me he was at the Holiday Inn, and to come over.

[55] Mr. **Neal**. Did you go over?

Mr. **Weinberg**. I drove over there. I asked him what the hell is he doing here, because he was supposed to be at the office for a payoff——

Senator **Rudman**. Counsel, would you just yield for a moment?

Mr. **Neal**. Sure.

Senator **Rudman**. I would just like the reporter to read back his last answer, if she could.

[Whereupon the reporter read back from the record as requested.]

Senator **Rudman**. I believe he said he drove over.

Mr. **Weinberg**. Yes, sir. I had a pickup truck, I told you. I did not have a car.

Senator **Rudman**. OK. I just wondered how you got there.

Mr. **Neal**. Mr. Weinberg, my question was—and I guess the answer is obvious—you did meet with Mr. Errichetti on the evening of January 19, 1979?

Mr. **Weinberg**. That is the night before the payoff. I met him at the Holiday Inn, and he told me he came out there because he had a bond meeting or something in New York, and it didn't pay to go all the way back to Camden, and he was going to stay over here.

Mr. **Neal**. How long did you meet?

Mr. **Weinberg**. Not long. Maybe 10, 15 minutes.

[56] Mr. **Neal**. Did you have dinner?

Mr. **Weinberg**. No.

Mr. **Neal**. You did not have dinner?

Mr. **Weinberg**. No. When he got there, it was late.

Mr. **Neal**. Did you go to his room?

Mr. **Weinberg**. No, because I'll tell you what happened. He was checking in at the time, if I remember correctly, and he did not want to give his credit card.

Mr. **Neal**. Mr. Weinberg, isn't it a fact that you told the FBI that you didn't meet with him on the night of the 19th?

Mr. **Weinberg**. No, that is not a fact, and I——

Mr. **Neal**. That is not a fact?

Mr. **Weinberg**. Not that I remember. When I went to New York, I told Jack—because they were watching when he was coming—I said, "He's at the Holiday Inn."

Mr. **Neal**. My question is, Did you tell the FBI that you did not meet with Mr. Errichetti on January 19, 1979?

Mr. **Weinberg**. As far as I remember, no, I did not say that.

Mr. **Neal**. At no time have you told the FBI that that meeting didn't take place?

Mr. **Weinberg**. I was questioned once about the meeting, and I did not remember the meeting.

Mr. **Neal**. What did you say—when you were questioned about the meeting, what did you say—"I don't remember any [57] meeting"?

Mr. **Weinberg**. I told them, "I don't remember at the time," and that was in 1980 I was questioned about it.

Mr. **Neal**. And you did not remember it then?

Mr. **Weinberg**. No, I did not remember. I looked up the phone records, and I found there was a phone call made from there.

Mr. **Neal**. As a matter of fact, you did not look up the phone records. The people, after they interrogated you, and you said there was no such meeting, they looked up the phone records, found there was a phone call, and brought that to your attention, and then you said, "Yes, there was such a meeting." Isn't that what happened?

Mr. **Weinberg**. No, that's not true. I was never interrogated over it.

Mr. **Neal**. Well, were you asked about whether you met——

Mr. **Weinberg**. I was asked by the strike force there, and I said, "Offhand, I don't remember," all right? And they said something about a phone, and I said, "Let's look up the records. It could be."

Mr. **Neal**. You are the one who said, "Let's go look up the records"?

Mr. **Weinberg**. They had maybe known about it, but I looked at the records. That is how I tell where I am most of the time. If I was in Florida, my phone calls would be down in [58] Florida. If I was in New York, the phone calls would be up in New York.

Mr. **Neal**. Where did you get the phone records? Am I correct that your answer is that you said to them, "I don't know. Let's go look at the phone records"?

Mr. **Weinberg**. I asked them to look at the phone records.

Mr. **Neal**. Well, did you look at the phone records?

Mr. **Weinberg**. Well, that's my phone, the phone records. That was my phone all of the credit card numbers was on.

Mr. **Neal**. When did you look at the phone records?

Mr. **Weinberg**. I do not remember offhand when I looked at them.

Mr. **Neal**. Did you look at them?

Mr. **Weinberg**. I assume—it's my phone.

Mr. **Neal**. Did you look at the phone records?

Mr. **Weinberg**. I have all the receipts—had all the receipts—for the phone, for my phone, when I paid the bill.

Mr. **Neal**. You are telling me it is not accurate, Mr. Weinberg, that you first denied that there was any such meeting on January 19, with Mr. Errichetti——

Mr. **Weinberg**. I never denied it——

Mr. **Neal**. Excuse me. Let me finish my question. And then you were presented with a phone bill, and then you then admitted you had such a meeting. You say that is not what happened?

[59] Mr. **Weinberg**. I think you got it a little mixed—I told you, when I was asked that question, I told them, "I don't remember," and I was not interrogated, like you said, by anyone. I have my own—that is my telephone, and I have all the records of the phone.

Mr. **Neal**. Was anyone with you when you met with Mr. Errichetti on the 19th?

Mr. **Weinberg**. No.

Mr. **Neal**. No one at all?

Mr. **Weinberg**. No. Like I said, it was late at night. It wasn't early in the day. It was about 8, 9.

Mr. **Neal**. Just you and Mr. Errichetti?

Mr. **Weinberg**. Well, who would you want me to call?

Mr. **Neal**. I beg your pardon?

Mr. **Weinberg**. Who would you want me to take over there with me?

Mr. **Neal**. My question was, you two were alone, just you two——

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Mr. Errichetti's nephew, DiLorenzo, wasn't present?

Mr. **Weinberg**. No; he was there.

Mr. **Neal**. So there was somebody else?

Mr. **Weinberg**. Well, it was Errichetti, his nephew, and me.

[60] Mr. **Neal**. OK, the three of you, then?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Now, where did the meeting take place?

Mr. **Weinberg**. In the lobby.

Mr. **Neal**. Just in the lobby?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. You never went up to his room?

Mr. **Weinberg**. I did not go to his room.

Mr. **Neal**. And you did not have dinner?

Mr. **Weinberg**. I did not have dinner.

Mr. **Neal**. At that meeting, did you tell him what he was to say the next day?

Mr. **Weinberg**. That is not true. At that meeting, he asked me if Jack has got his money. I says, "Yes."

He said, "There will be no hitches?"

I said, "As far as I know, there's no hitches."

Mr. **Neal**. As far as you know, what?

Mr. **Weinberg**. "As far as I know, there's no hitches."

Mr. **Neal**. You didn't go over a scenario with him as to what he was to say the next day and how he was to—the speech he was to make?

Mr. **Weinberg**. That is not true, because the meeting he had with Jack in Atlantic City, he laid out the whole thing to him then.

Mr. **Neal**. But you did not tell him what to say the next [61] day?

Mr. **Weinberg**. I didn't tell him a word to say the next day.

Mr. **Neal**. Did you tell him that he'll get money, and then you all will share it?

Mr. **Weinberg**. Mr. Neal, you met the Mayor. Nobody tells the Mayor what to say.

Mr. **Neal**. My question is, did you tell him what to say?

Mr. **Weinberg**. I told you just before, I did not tell him what to say.

Mr. **Neal**. Did you arrange with him what would happen with the money once he got it?

Mr. **Weinberg**. What would happen with the money?

Mr. **Neal**. Yes, sir.

Mr. **Weinberg**. What do you mean, "happen with the money"?

Mr. **Neal**. Did you tell him what to do with the money after he got it?

Mr. **Weinberg**. I didn't tell him to do anything with the money after he got it.

Mr. **Neal**. All right. The next day, there was a meeting; is that correct?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. And at that meeting, Mr. Errichetti was given $25,000 in an envelope?

Mr. **Weinberg**. That's correct.

[62] Mr. **Neal**. Did you get any or all of that money?

Mr. **Weinberg**. I didn't get any of it.

Mr. **Neal**. You didn't get any of it.

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Did you know where—you knew where Mr. Errichetti was staying, did you not?

Mr. **Weinberg**. I knew—he checked out of the Holiday Inn, as far as I know.

Mr. **Neal**. All right. Did you ever get a key to his hotel room?

Mr. **Weinberg**. No, I didn't.

Mr. **Neal**. And you never at any time went to his hotel room?

Mr. **Weinberg**. After the meeting, I went to the RA——

Mr. **Neal**. To the what?

Mr. **Weinberg**. To the RA, the FBI building there. And I was in the building most of the day until I went home.

Mr. **Neal**. OK. When did you go—where were you during the meeting?

Mr. **Weinberg**. I believe I was in the outer office.

Mr. **Neal**. At the outer office at Abdul Enterprises, where the recorded meeting was held?

Mr. **Weinberg**. Correct.

Mr. **Neal**. Where did you go immediately upon leaving that office?

[63] Mr. **Weinberg**. To the RA.

Mr. **Neal**. What time was the meeting?

Mr. **Weinberg**. Oh, I haven't the slightest idea what time it was.

Mr. NEAL. Once Mr. Errichetti left, did you immediately go to the FBI office?

Mr. WEINBERG. No. I believe we stood around there. We had to take the reel off the tape, because the tape machine was in the conference room.

Mr. NEAL. All right. Did you go directly—after you left Abdul Enterprises, did you go directly to the FBI office?

Mr. WEINBERG. I went to the FBI directly after that.

Mr. NEAL. And did not go anywhere else before you went to the FBI office?

Mr. WEINBERG. No, I didn't—in fact, I believe McCarthy was behind me or was in front of me when we were going down there.

Mr. NEAL. What were you driving at this time?

Mr. WEINBERG. My pickup truck.

Mr. NEAL. Is that a van or a truck?

Mr. WEINBERG. Truck.

Mr. NEAL. You mean, it has got a bed, an open bed, in the back?

Mr. WEINBERG. That is correct.

Mr. NEAL. You did not go to the Holiday Inn hotel or motel?

[64] Mr. WEINBERG. No, I didn't.

Mr. NEAL. Did you go to the Holiday Inn hotel or motel at any time during the day of January 20?

Mr. WEINBERG. No, I didn't.

Mr. NEAL. Mr. Weinberg, did you see Mr.—did you have a conversation with Mr. Errichetti on January 25, 1979?

Mr. WEINBERG. Most likely, I did.

Mr. NEAL. Pardon me?

Mr. WEINBERG. I, most likely, I did. Was it a telephone conversation?

Mr. NEAL. Yes, sir.

Mr. WEINBERG. Most likely. I don't remember the date.

Mr. NEAL. Was it recorded?

Mr. WEINBERG. If there's a record, it was recorded.

Mr. NEAL. Pardon me?

Mr. WEINBERG. If there's a record of it, it was recorded.

Mr. NEAL. Well, do you have any recollection of whether it was recorded or not?

Mr. WEINBERG. You gotta be kidding. You give me a date, and you want me to remember if I recorded something that date?

Mr. NEAL. Do you have any recollection?

Mr. WEINBERG. None whatsoever.

Mr. NEAL. Now, did you see Mr. Errichetti on—in Florida in January of 1979?

Mr. WEINBERG. Yes. I don't know the date you're giving [65] me, but Errichetti did come down to Florida—if we are talking about the same time.

Mr. NEAL. When did he come to Florida?

Mr. WEINBERG. I haven't the slighest idea. He checked into the Sheraton Hotel, I think it is, on West Palm Beach Lake Boulevard. He called me up and he said he was in Florida. I notified the FBI office in West Palm. They notified the New York office. Word came back not to meet him.

Mr. NEAL. Not to meet him?

Mr. WEINBERG. That's correct.

Mr. NEAL. Did you meet him?

Mr. WEINBERG. I went against them. I said to Gunnar, I says, "They gotta be kidding. If you don't meet him, the guy's going to get pissed, and you'll never see him again."

Mr. NEAL. Did you know he was coming to Florida?

Mr. WEINBERG. No, I didn't.

Mr. NEAL. Are you saying that you didn't call him up and invite him to come down to Florida and spend a few days?

Mr. WEINBERG. You gotta be kidding——

Mr. NEAL. No—look, I'm not kidding about anything about this. I am asking you did you invite him——

Mr. WEINBERG. Why would I—why would I invite——

Mr. NEAL. Did you call him up and invite him down to Florida?

Mr. WEINBERG. Why would I invite him down to Florida to [66] see where I'm living?

Mr. NEAL. Is that answer, "No, I didn't invite him down to Florida"?

Mr. WEINBERG. No; I didn't invite him.

Mr. NEAL. And you were surprised that he was there when he called you; you were not aware that he was in Florida.

Mr. WEINBERG. As soon as I hear—he called me—I called the FBI office in West Palm and let them know he was in town.

Mr. NEAL. When did he call you? Was it early one morning, like 3 a.m.?

Mr. WEINBERG. Well, there's a discrepancy. Somone told me he called me at 2 in the morning, and I do not believe he called me at 2 in the morning, because I wouldn't even answer the phone at 2 in the morning.

Mr. NEAL. When do you think he did call you?

Mr. WEINBERG. I haven't the slightest idea of the exact time he called me, but I don't believe it was 2 in the morning, because I would not get up and go to see anyone at 2 in the morning.

Mr. NEAL. Where did you meet him?

Mr. WEINBERG. I went to his hotel.

Mr. NEAL. You went to his hotel?

Mr. WEINBERG. Right. And the following day, I went back, and he was gone.

Mr. NEAL. OK. What time of day did you go to the [67] hotel and meet him; do you know?

Mr. WEINBERG. I believe—I think it was sometime in the afternoon, around 12, maybe; I'm not sure.

Mr. NEAL. Around 12?

Mr. WEINBERG. Something like that—or, it may have been earlier. I really don't know.

Mr. NEAL. Did you ever tell anybody you met him at the airport?

Mr. WEINBERG. No.

Mr. NEAL. And in fact, you didn't meet him at the airport?

Mr. WEINBERG. I met him at the Sheraton Hotel, where he said he was in.

Mr. NEAL. Why was he down there?

Mr. WEINBERG. I haven't the slightest idea.

Mr. NEAL. Did he give you anything while he was down there?

Mr. WEINBERG. He gave me some CD's, which I took and brought them right over to the RA.

Mr. **Neal**. What kind of CD's?

Mr. **Weinberg**. I believe they were Chemical—well, they were Chemical Bank CD's.

Mr. **Neal**. Were they—had you asked for CD's?

Mr. **Weinberg**. I gave him a copy of it, because he was pushing us for counterfeit money, and we didn't want to get [68] involved with counterfeit money, and he needed money, so he said, "Well"—well, he knew about Rosenberg with his CD's, so he says, "How about the CD's?" and I said, "Well, Chemical Bank, CD's."

"What do they look like?"

He wanted to see one. And there is a tape recording from a guy named Frank Pulini who claims he spent $10,000 to get them printed up.

Mr. **Neal**. When did you give him—you gave him a blank CD; is that right?

Mr. **Weinberg**. Right.

Mr. **Neal**. Does it have the name of the bank printed on it?

Mr. **Weinberg**. Right.

Mr. **Neal**. What was the name of the bank?

Mr. **Weinberg**. I believe it was Chemical Bank.

Mr. **Neal**. When did you give him that?

Mr. **Weinberg**. I think it was sometime in January.

Mr. **Neal**. Was it at any particular recorded meeting, or after any recorded meeting?

Mr. **Weinberg**. I believe it was down in Atlantic City sometime. Amoroso was there with us.

Mr. **Neal**. You gave him a blank CD——

Mr. **Weinberg**. A blank CD.

Mr. **Neal**. What did you tell him to do with it?

[69] Mr. **Weinberg**. I didn't tell him to do anything. He wanted to know what they were, and he says, "If I get these printed up"—I said, "Do what you want."

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. I told him, do what he wants.

Mr. **Neal**. Do what he wants with it?

Mr. **Weinberg**. He was trying to push us to putting counterfeit money into the Arabs' bank.

Mr. **Neal**. He was trying to push you to do it?

Mr. **Weinberg**. Yes. He was working with a guy down in Florida to get counterfeit money, and he was trying to push us to take the counterfeit money and put it into the Arabs' bank. We didn't want to play around with counterfeit money at the time.

Mr. **Neal**. Why did he want to put counterfeit CD's in the Arabs' bank?

Mr. **Weinberg**. Because he thought that we were double-dealing the Arab.

Mr. **Neal**. Well, what do you mean? I mean, would you get money out from the bank, good money in lieu of the bad?

Mr. **Weinberg**. The scenario we gave the people, like on the CD's, the Arabs can't take their money out of the country. In order to get their money out of the country, they have to put something of value in there to take the money out, like a CD—if they put a $1 million CD, they can take $1 million [70] cash out. And that's the scenario we gave everyone.

Mr. **Neal**. And so you say he's following that up, then, giving you—wanting to make up some phony CD's so you can get more money out, is that what you're saying?

Mr. **Weinberg**. And he was—originally, it was counterfeit money, and we were trying to get off the subject of counterfeit money, because if you put it in, you gotta bring it right out. With the CD's, we can stall; with the counterfeit money, you can't stall.

Mr. **Neal**. But why did you give him a blank CD?

Mr. **Weinberg**. He wanted to see what a CD looked like and what he can do with it, and I gave him a blank CD.

Mr. **Neal**. And you didn't say, "Make some up," or anything like that?

Mr. **Weinberg**. No, I didn't tell him to make any—in fact, when he told us the price he—when Pulini told us the price he paid, I couldn't believe it.

Mr. **Neal**. Well, when you gave him the blank—when he asked you, he wanted to merely see what a blank CD would look like; is that correct?

Mr. **Weinberg**. No. He wanted a copy of a CD.

Mr. **Neal**. And so you gave him a copy of a CD, but you did not tell him to make it up, or anything else?

Mr. **Weinberg**. No, I didn't.

Mr. **Neal**. All right. Then he comes to Florida, and he [71] brings you what?

Mr. **Weinberg**. He brought me blank CD's to see if these were all right, to check them out.

Mr. **Neal**. Do you mean, he brought you some more blank CD's?

Mr. **Weinberg**. He brought me blank CD's this time. He had them——

Mr. **Neal**. What bank was that on?

Mr. **Weinberg**. On Chemical Bank.

Mr. **Neal**. He brought you one blank CD?

Mr. **Weinberg**. No. I think there was a few. I don't remember offhand whether it was 1, 2, or 10 or 20, but he brought blank CD's, and I took them over to the RA.

Mr. **Neal**. Now, as I understand this, then, sometime in January, he wanted to see what a blank CD would look like, and you gave him one. Then he comes to Florida, and he brings you three or four blank CD's, and gives them to you?

Mr. **Weinberg**. I didn't say three or four.

Mr. **Neal**. Well——

Mr. **Weinberg**. I said he brought a few blank CD's, gave them to me and said, "Are these all right? Are these printed right?"

Mr. **Neal**. And what did you say?

Mr. **Weinberg**. I says, "Yeah." What the hell would I know the difference?

[72] Mr. **Neal**. All right. Was that the only reason for him coming to Florida?

Mr. **Weinberg**. As far as I know. He said that he was down in the Miami area and had some meetings, but I don't know what he came for. And I took the CD's and brought them right to the RA.

Mr. **Neal**. Took the blank CD's?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. And they weren't filled out at all?

Mr. **Weinberg**. They were not filled out.

Mr. **Neal**. OK. Mr. Weinberg, tell us about the Margot Denedy matter. Do you know Margot Denedy?

Mr. **Weinberg**. Which matter are you talking about Margot Denedy? Are you talking about when—which one are you talking about, when——

Mr. **Neal**. Do you know Margot Denedy?

Mr. **Weinberg**. I know Margot Denedy, or Margo Kennedy, whatever the name is.

Mr. **Neal**. Who was she?

Mr. **Weinberg**. She is an FBI agent.

Mr. **Neal**. All right. Did you ever see her picture in a newspaper?

Mr. **Weinberg**. No, I didn't.

Mr. **Neal**. Were you ever told by anybody—not anybody—by Mr. Errichetti that he had seen her name?

[73] Mr. **Weinberg**. No, I wasn't.

Mr. **Neal**. Were you told by Mr. Rosenberg that he had seen her picture in the paper?

Mr. **Weinberg**. Mr. Rosenberg called me in Florida and asked me where Margo was. I says, "I don't know."

I says, "Why?"

He says, "There's a picture of her in the paper."

Now, I don't believe Rosenberg seen the picture. I believe his girlfriend seen the picture.

I says, "What's it say?"

"That she took a hijacker off a plane."

I said, "I don't know anything about it, Bill." I says, "I have to find out myself."

He says, "Well," he says, "it's the spittin' image of her," or something like that.

I said, "Well, I'll call you back."

I hung the phone up. I called Gunnar Askeland. I says, "Gunnar, do you know anything about Margo's picture in the paper about a hijacker?"

He says, "No." He says, "Let me call up there to find out."

Within 5 minutes, John Good was on the phone, and he says, "Yes," he says, "it's true. Any problem?"

I said, "I don't think so."

We discussed it. He said, "Any of you with the mayor?" [74] I says, "No. But I'll call the mayor up to find out if he knows anything about it."

I called Rosenberg up and got into a discussion and said, "Look, if you don't want to deal, don't deal with us, but that's bullshit."

I then called the mayor and set a meeting up—I don't remember the date of the meeting, but it was a couple of days later—to meet him in Atlantic City; we wanted to speak to him.

I then flew up to New York. Me and Tony went up there. We met, and the plan was to see if the mayor knows anything about it. We went down to Atlantic City. John Good and another agent backed us up, and we also had Bruce Brady with us.

We got down to Atlantic City. The first one to meet us there was Rosenberg, with Ms. Snow. He never said a word to us. We figured—then, we met the mayor, and the mayor never said a word to us about it.

Mr. NEAL. You are aware that there is an FBI report that says, "On February 5, 1979, Weinberg informed McCarthy that on January 31, 1979, while in Florida, he received separate telephone calls from William Rosenberg and Angelo Errichetti, both unrecorded, who inquired about a photograph of special agent Margot Denedy that appeared in local newspapers in connection with a hijacking at LaGuardia Airport."

Mr. WEINBERG. I know about that.

[75] Mr. NEAL. You are saying that Mr. McCarthy is in error on that?

Mr. WEINBERG. I believe Mr. McCarthy made a mistake on that. I testified in trial that I didn't know anything about that 302; I had never seen the 302 until 1980 when the trials were there. I testified in the trial that it's not true.

Mr. NEAL. That this is incorrect?

Mr. WEINBERG. Yes. I believe he made an error.

Mr. NEAL. The 302 further states, "Weinberg states that he attempted to convince both Rosenberg and Errichetti that Denedy was not an FBI agent." Are you aware——

Mr. WEINBERG. I know of—I did not speak to the mayor about it. If I spoke to the mayor about it, why did we go down to Atlantic City to find out if he knew anything?

Mr. NEAL. Mr. Weinberg, when did you come into Washington this time?

Mr. WEINBERG. This time?

Mr. NEAL. Yes, sir.

Mr. WEINBERG. I came into Washington Monday.

Mr. NEAL. Where have you spent your time from Monday to this morning.

Mr. WEINBERG. In the FBI building. And through this morning—yesterday, I went back to my hotel room, and I was with my attorney yesterday.

Mr. NEAL. You have been in the FBI building from Monday [76] to today—until last night?

Mr. WEINBERG. I was in the FBI building from Monday at, say, 1, and I was there yesterday—Tuesday.

Mr. NEAL. Have you been going over your testimony for today?

Mr. WEINBERG. No, I wasn't.

Mr. NEAL. Were you going over documents involved in Abscam?

Mr. WEINBERG. No, I wasn't. I told you outside that I was up there for different business.

Mr. NEAL. The several days you spent at the FBI had nothing to do with your appearance here?

Mr. WEINBERG. Had nothing to do with my appearance here.

Mr. NEAL. Mr. Weinberg, let's go to the period April—or, March 30, 1979. Did you have a meeting with Mr. Errichetti on the evening of March 30, 1979?

Mr. WEINBERG. That is, before the MacDonald payoff?

Mr. NEAL. Yes, sir.

Mr. WEINBERG. That is correct.

Mr. NEAL. How long was that meeting?

Mr. **Weinberg**. Well, let's—before you just say "a meeting", it sounds like I met him. The original deal for MacDonald was set—and this was set up at the party on the boat—that Errichetti would come to the office with MacDonald, they would hand Errichetti the briefcase with the money, he [77] would go out in the parking lot and hand it to MacDonald, and MacDonald would wave at McCarthy and say, "Thanks," from the parking lot. That was the original deal. The original deal was $100,000 to be paid to him. I was——

Mr. **Neal**. I understand you——

Mr. **Weinberg**. Well, no, you don't——

Mr. **Neal**. You don't have to get into all that. My question simply was how long was the meeting.

Mr. **Weinberg**. Mr. Neal, you don't understand, because I wasn't supposed to be up there at that meeting. I got a call Thursday, they had to come up, to change the meeting.

Mr. **Neal**. Do you want to answer me?

Mr. **Weinberg**. Yes, I'll answer your question, if you'll let me answer it.

Mr. **Neal**. If you'll answer the question, I'll let you make any explanation you want.

Mr. **Weinberg**. I came up—I believe it was Thursday I came up from Florida, or Friday, and I called the mayor, I gotta see him at the airport. The mayor said, "Why?" and I said, "I can't talk on the phone, but I gotta see you, and it's important."

The mayor came out to the airport. He came out—I believe he came out—no, his nephew was there, because he was driving, and we were sitting in the back of the car—and I explained to him it can't be done that way, that MacDonald [78] must come up to the office. And after yelling a few times, he agreed to it.

On the way out, he gave me a list of politicians that he had that we could pay off. He wrote it in his handwriting—I started to write in mine and said, "You'd better write it."

Mr. **Neal**. Mr. Chairman, could I ask the Chair to ask the witness to answer the question, how long was the meeting?

Mr. **Weinberg**. Well, I'm telling you, the meeting had to be from the time he picked me up at the airport until he drove me out to the Holiday Inn in Hauppauge, and then the FBI picked me up there.

Senator **Mathias**. How long was that?

Mr. **Weinberg**. Well, according to how much traffic. It could be an hour.

Mr. **Neal**. An hour, is that your best estimate?

Mr. **Weinberg**. Maybe more than an hour.

Mr. **Neal**. Two hours? What's your best estimate?

Mr. **Weinberg**. I don't like to estimate.

Mr. **Neal**. Was it at least an hour, Mr. Weinberg?

Mr. **Weinberg**. I would say it could be an hour.

Mr. **Neal**. And the meeting took place, according to your testimony, when he picked you up at the airport——

Mr. **Weinberg**. He picked me up at the airport.

Mr. **Neal**. What airport?

Mr. **Weinberg**. I believe it was JFK.

[79] Mr. **Neal**. And drove you to the Holiday Inn on Long Island, Hauppauge, Long Island?

Mr. Weinberg. Right. I told him I was staying there, I was checking in there.

Mr. Neal. Did he drop you off, then?

Mr. Weinberg. He dropped me off there, with the list.

Mr. Neal. Give us the conversation—by the way, this was not recorded, I gather?

Mr. Weinberg. How could I record it? I came up from Florida; I had no recording devices.

Mr. Neal. Mr. Weinberg, the question was, was the meeting recorded?

Mr. Weinberg. And I'm telling you it couldn't be recorded; I had no recording devices.

Mr. Neal. Tell us the substance of that meeting on March 30, 1979.

Mr. Weinberg. The substance was that MacDonald has to come up to the office to get the money. Otherwise, there was no deal.

Mr. Neal. During this occasion, did you coach Mr. Errichetti on what Mr. MacDonald was going to have to do or say?

Mr. Weinberg. No; I didn't.

Mr. Neal. Did you tell him at that time that the sheik or the emir had just approved a million dollars for the sheik [79-A] to buy friends?

Mr. Weinberg. The "emah"?

Mr. Neal. Emir.

Mr. Weinberg. Emir.

Mr. Neal. Emir.

Mr. Weinberg. Oh. No; I may have said that. I really don't know. I can't answer you truthfully if I said that or not about the million dollars.

Mr. Neal. Did you say—let me give you the entire question. Did you say, in these words or in substance, that "The sheik has just approved a million dollars for us to buy friends"?

Mr. Weinberg. Like I said to you, I may have said it. I don't know.

Mr. Neal. You don't know whether you said that?

Mr. Weinberg. I said a lot of things. Do you think I remember everything I said?

Mr. Neal. And did you further say that, "These friends don't have to do nothing, just come in, be a friend. It's a gift, pay the taxes, and there'd be $100,000 for a Congressman or a Senator, 50 of which go back to us"?

Mr. Weinberg. The original—no, I did not say that to him. The only thing that I would say to him was, in order for them to get the payoff, the person that came for the payoff has got to say he's going to do something for it and take the [80] money. That was the only ground rules we gave them.

Mr. Neal. Did you tell him that they would not have to do anything; did you tell them that they would not have to do anything, it is all play-acting——

Mr. Weinberg. No, I never——

Mr. Neal. "Just bullshit"?

Mr. Weinberg. You're taking the tape on Senator Williams, which he said he didn't listen to me.

Mr. Neal. Mr. Weinberg——

Mr. **Weinberg**. What? I did not say that to him.

Mr. **Neal**. The question is, did you say it?

Mr. **Weinberg**. I did not say that to him.

Mr. **Neal**. And did you say that they will get $100 per Congressman or Senator and that 50 "will come back to us," meaning you, Mr. Weinberg——

Mr. **Weinberg**. A hundred dollars per——

Mr. **Neal**. Excuse me, just a minute—you, meaning, $100,000 for a Senator or a Congressman, $50,000 of which would come back to you, Mr. Errichetti, and Mr. DeVito.

Mr. **Weinberg**. We weren't—I don't believe we were talking about Congressmen at that time, all right, and I don't believe that we were talking about a $50,000 kickback. The only kickback was mentioned on MacDonald was that he was kicking back $25,000 to pay for the fire we had on the boat.

Mr. **Neal**. Is your answer to my question, "No, that [81] didn't take place, that conversation didn't take place"?

Mr. **Weinberg**. What you're saying did not take place.

Mr. **Neal**. All right. Now, then, Mr. Weinberg, there was a meeting on March 31 involving Mr. MacDonald, was there not?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. And after this meeting—let me go back just a minute to the evening of March 31. Mr. Weinberg picked you up at the airport, drove you to the Holiday Inn in Hauppauge, Long Island.

Mr. **Weinberg**. Do you want to repeat that again?

Mr. **Neal**. Yes. This is just a preface to my question, but you have stated that on March 30, Mr. Errichetti picked you, Mr. Weinberg, up at the airport and drove you to the Holiday Inn in Hauppauge.

Mr. **Weinberg**. That's correct—if that's the date. I'm not sure on the date.

Mr. **Neal**. All right. It's the night before the MacDonald matter——

Mr. **Weinberg**. Right.

Mr. **Neal**. OK, whatever the date is.

Did you all go in the Holiday Inn at all?

Mr. **Weinberg**. I brought my luggage into the lobby, and he left me there. I said, "I'm going to check in," and I got rid of him, because I knew the FBI was waiting to pick me up. I did not go in the Holiday Inn. I did not take a room.

[82] Mr. **Neal**. You got rid of him because you knew the FBI was waiting to pick you up?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. Did he go to your room with you?

Mr. **Weinberg**. I just told you, I did not take a room there. I did not check in. I just put my luggage, and I said, "Look, you got to get back. I'll see you"—which would have been tomorrow.

Mr. **Neal**. Did he go anywhere in the hotel with you, other than the lobby?

Mr. **Weinberg**. No. He didn't come into the lobby. If my memory is correct, he dropped me off—I got out of the car, and they took right off.

Mr. **Neal**. After this MacDonald matter occurred, did you have a further meeting involving Mr. MacDonald on that day?

Mr. **Weinberg**. I don't follow your question. What do you mean, "a further meeting"?

Mr. **Neal**. Did you have a meeting with Mr. Errichetti and Mr. MacDonald, Mr. Amoroso, Mr. Weinberg, for lunch anywhere on that day?

Mr. **Weinberg**. Are you talking about the day of the payoff?

Mr. **Neal**. Yes, sir.

Mr. **Weinberg**. Yes. Also, the nephew was there.

Mr. **Neal**. Right. Was that meeting recorded, any or all [83] portions of it.

Mr. **Weinberg**. There was a recording made—now, I don't know if it came out or not. I also was wearing a wire.

Mr. **Neal**. Let me ask you if you recollect this part of the conversation:

"Errichetti. I said to him, the money's for our future. Have to draw a picture for the"—word he used, "M.F."—"The guy's always useless. The guy was so happy."

And Mr. Errichetti continues: "See you tomorrow, or what?"

And you say, "I'll give you a call. Don't worry about it."

Mr. **Weinberg**. I don't remember anything like that.

Mr. **Neal**. And then Mr. Errichetti says, "I won't—I won't say nothing to Tony."

Do you remember a conversation at that luncheon that went like that between you and Mr. Errichetti?

Mr. **Weinberg**. No. I don't remember any conversation like that at that lunch.

Mr. **Neal**. Do you want to look at the tape?

Mr. **Weinberg**. Yes, I'd like to see that tape.

Mr. **Neal**. All right. (Handing document to witness.) I am reading a portion here that I will—you can look at any and all parts of it.

Senator **Mathias**. But you have bracketed the——

Mr. **Neal**. I have bracketed what I have been reading, yes.

[84] Mr. **Weinberg** [perusing document]. You're taking it out of context again.

Mr. **Neal**. Did you——

Mr. **Weinberg**. If this says it on the tape, I would like to hear the tape. We're talking about the $25,000 kickback that he's got to give us.

Mr. **Neal**. My question to you, sir—and I'd like the record to reflect, Mr. Chairman, that I've given the witness the entire transcript—and Mr. Witness, you can point out to any place where you say that there's anything in this transcript that corrects or adjusts what I've said.

My question to you is, did Mr. Errichetti say on that tape to you, "Hey, the money's for our future (inaudible), have to draw a picture for the M.F. The guy was always useless. The guy was so happy," and then says, "See you tomorrow, or what?" and you say, "I'll give you a call. Don't worry about it. I'll explain to Tony."

Mr. **Weinberg**. Tony was sitting right there.

Mr. **Neal**. Did you—is that conversation on that transcript you have?

Mr. **Weinberg**. You have it on here, but you're taking it out of context. We're talking about the $25,000 kickback he's supposed to give us.

Mr. **Neal**. You say Tony was there?

Mr. **Weinberg**. That's right.

[85] Mr. **Neal**. Look right above that, where it shows that you took Mr. Errichetti aside—and by the way, this is an FBI transcript, I might say——

Mr. **Weinberg**. Well, if I took Tony aside——

Mr. **Neal**. Does it say that on the transcript, Mr. Weinberg?

Mr. **Weinberg**. One second, one second. You're making an accusation I took Tony—Errichetti—aside. If I took him aside, this would not be on the tape, because the recorder was in the briefcase right at the hotel.

Mr. **Neal**. May I have the transcript back again? I'll point you to something.

[Mr. Weinberg handing document to Mr. Neal.]

Mr. **Neal**. Let me point you to page 2, where you say: "[Cough] I've got to speak to you (inaudible) about 5 minutes alone."

"All right," and "Uh, we'll get back with you."

Let me ask you if that doesn't reflect that this conversation was you and Mr. Errichetti alone, out of the presence of anybody else?

Mr. **Weinberg**. And I'll reflect to you, Mr. Neal——

Mr. **Neal**. And there is no indication from what I'm reading from that Mr. DeVito is saying anything at all.

Mr. **Weinberg**. It would be impossible. The tape recorder was in the briefcase. The briefcase was under the table. And [86] if I walked out with him alone, you wouldn't hear the conversation.

Mr. **Neal**. Mr. Weinberg, I guess I'm going to have to just go ahead and ask you the question. Did you take Mr. Errichetti alone during that luncheon meeting, and did you make those statements on that transcript?

Mr. **Weinberg**. The statement was made on the transcript talking about the $25,000 kickback. That's why I said, "Don't worry about it."

Mr. **Neal**. Did you take Mr. Errichetti alone during that conversation——

Mr. **Weinberg**. No——

Mr. **Neal**. Aside from everybody else, and did you have a conversation with him?

Mr. **Weinberg**. No, I didn't, because if I took him alone, I'd have to carry the [deleted] with me.

Mr. **Neal**. Did you take him alone and carry the [deleted] with you, Mr. Weinberg?

Mr. **Weinberg**. Let's not be ridiculous. Am I going to walk along with a [deleted]? Am I going to pick it up and walk with a [deleted]?

Mr. **Neal**. The answer—are you telling me you did not take your [deleted] and take Mr. Errichetti aside and have a private conversation with him? Is that your answer?

Mr. **Weinberg**. The private conversation that I had with [87] him was had out by the car, when he gave me the book with all the politicians' pictures and everything in it, plus he gave me the key to the city—and Tony was there when he gave it to us.

Mr. **Neal**. Let me have the tape again, Mr. Weinberg, if you please, and while they're looking at the tape, I'm going to ask you, are those statements I've read to you on that transcripts?

Mr. **Weinberg**. The statement you read to me is on that transcript.

Mr. **Neal**. OK. Now, let me have the transcript back again, please.

Senator **Leahy**. Mr. Chairman, I wonder if I might just ask one technical question.

Mr. **Neal**. Sure.

Senator **Leahy**. Mr. Weinberg, you said the tape recorder was [deleted] transmitting device?

Mr. **Weinberg**. [deleted.]

Senator **Leahy**. [deleted.]

Mr. **Weinberg**. No, sir, Senator. It couldn't——

[88] Senator **Leahy**. [deleted.]

Mr. **Weinberg**. No, sir.

Senator **Leahy**. Did the FBI agents pick up some of the material from [deleted].

Mr. **Weinberg**. No, sir. The two agents in the hotel room [deleted].

Senator **Leahy**. So they never picked up anything from the [deleted].

Mr. **Weinberg**. Nothing. Once we got out of the car, and we went in there, they couldn't pick up a thing. The only way they could report at the time was [deleted], which we had under the table there, while MacDonald was sitting there, the nephew was sitting there, I was there, and Tony Amoroso.

Senator **Leahy**. I didn't quite get your answer to Mr. Neal's question. His question was basically, did you pick up [deleted] and take it with you to go out and have a private conversation with Mr. Errichetti—yes or no?

Mr. **Weinberg**. I did not. It would be an impossibility to ask the senator to come out, and I'm walking out with [deleted]. They'd get wise right away there's something in there.

Mr. **Neal**. Did you go outside——

[89] Mr. **Weinberg**. And besides, Mr. Amoroso had charge of [deleted] at the time.

Mr. **Neal**. Let me follow up the Senator's question a minute. You now tell Senator Leahy that in addition to something, a recording device [deleted].

Mr. **Weinberg**. I said that in the beginning when you were talking [deleted].

Mr. **Neal**. And [deleted] transmitting it to a hotel room?

Mr. **Weinberg**. We had two agents in a hotel room with [deleted], in case there was any trouble.

Mr. **Neal**. [deleted], what was going on?

Mr. **Weinberg**. Right. In case me and Tony became separated, they would [deleted].

Mr. **Neal**. And was this transmitting?

Mr. **Weinberg**. I didn't know at the time, but it wasn't.

Mr. **Neal**. You didn't know at the time it wasn't transmitting?

Mr. **Weinberg**. No, I had no way of knowing if it was transmitting or not.

Mr. **Neal**. OK. So you didn't need your [deleted] to walk out; you thought you had [deleted], didn't you?

Mr. **Weinberg**. I had [deleted], but I did not walk out with him. I was at the table with him. The only time I [90] walked away from that table was when we went to get the book and the keys to the city.

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. Let me read you some language on this after you say, "[Cough] I've got to speak to you about 5 minutes alone."

"All right"

And, "Uh, we'll get back with you (inaudible)."

You go on then and say—Errichetti says, "Where is the book? Did Joey give you the book?"

Is this the conversation outside you're talking about, about the book?

Mr. **Weinberg**. Most likely.

Mr. **Neal**. You and Mr. Errichetti were alone on that.

Mr. **Weinberg**. No, we weren't. Mr. Amoroso was with us.

Mr. **Neal**. He was?

Mr. **Weinberg**. That's right.

Mr. **Neal**. Where was this?

Mr. **Weinberg**. This was when we went out there to his car and he gave us the key to Camden to give to the sheik, and he also gave us the book with the names and their pictures.

Mr. **Neal**. Out by the car?

Mr. **Weinberg**. Out by the car.

[91] Mr. **Neal**. Was this after lunch?

Mr. **Weinberg**. No. They were sitting down, eating, when we got there. We went over, and then we sat down, we ordered, and then we went outside.

Mr. **Neal**. So you got up from the table, went outside to the car, had the conversation about the book, and then came back to the table; is that right——

Mr. **Weinberg**. Right, me and Amoroso——

Mr. **Neal**. And sat back down?

Mr. **Weinberg**. I believe that's the way it happened.

Mr. **Neal**. Now, did you leave the briefcase under the table when you went outside?

Mr. **Weinberg**. I didn't handle the briefcase. Tony was handling the briefcase.

Mr. **Neal**. Did he have the briefcase with him when you went outside?

Mr. **Weinberg**. I don't know.

Mr. **Neal**. Pardon?

Mr. **Weinberg**. I don't know.

Mr. **Neal**. You don't know. OK. The conversation I've just read to you was outside——

Mr. **Weinberg**. I didn't say that. You're saying that.

Mr. **Neal**. I'm asking you.

Mr. **Weinberg**. No, I don't believe it was. I believe it was at the table.

[92] Mr. **Neal**. Go ahead.

Mr. **Wheeler**. Mr. Weinberg, let me ask you a question. As I understand your testimony so far, you are contending that you did not in fact take Errichetti aside to talk to him alone before you went out to the parking lot. Is that your testimony?

Mr. **Weinberg**. I said to Errichetti——

Mr. **Wheeler**. Is it your testimony that you did not——

Mr. **Weinberg**. Wait, wait don't——

Mr. **Wheeler**. Mr. Weinberg, it's a very simple question. Is it your testimony that you did not take Mr. Errichetti aside before you went out to the parking lot and talk to Mr. Erichetti, just the two of you?

Mr. **Weinberg**. When I say "alone," me and Amoroso went outside, because he promised us the book.

Mr. **Wheeler**. All right. You're saying that Mr. Amoroso was always with you when you were talking to Errichetti; is that right?

Mr. **Weinberg**. That is correct.

Mr. **Wheeler**. All right. Let me point two things out to you, Mr. Weinberg. No. 1, the taped transcript that has been shown to you says:

"Mel Weinberg. I got to speak to you about 5 minutes alone, all right, and we'll get back with you."

Angelo Errichetti then says, "All right," and you then have a conversation. And the only two people who are talking [93] are you and Angelo Errichetti. Let me point out to you one of the things that is said in that conversation.

One of the things that is said by Mel Weinberg is, "I'll give you a call. Don't worry about it. I'll explain to Tony."

And in the version that you have, I believe, in front of you, it shows Errichetti saying, "I won't say nothing to Tony."

Mr. **Dienst**. We don't have the version in front of us.

Mr. **Wheeler**. Are you telling me, Mr. Weinberg, that you said in front of Tony, "I'll explain to Tony" and Errichetti says in front of Tony, "I won't say nothing to Tony"? Is that your testimony?

Mr. **Weinberg**. Now, 1 second. Don't start putting words in my mouth. Tony may have got up from the table. I don't remember. But when I was speaking to him, we were talking about that I was told to get the $25,000 and make arrangements for an agent to pick it up, and that's what the conversation was about.

Mr. **Neal**. What did you mean when you say, "I'll give you a call. Don't worry about it. I'll explain to Tony"?

Mr. **Weinberg**. Well, if I said about the $25,000, "Don't worry about it," it meant that, "I'll give you a call when we're going to pick it up."

Mr. **Neal**. Mr. Errichetti says, "Will I see you tomorrow, or what?" and you say, "I'll give you a call. Don't worry about it. I'll explain to Tony."

[94] Mr. **Weinberg**. Who says that, Errichetti?

Mr. **Neal**. Errichetti says, "Will I see you tomorrow, or what?" and you say, "I'll give you a call. Don't worry about it. I'll explain to Tony."

What did you mean?

Mr. **Weinberg**. We're talking about the $25,000 that we got to pick up, and we thought we were going to pick it up Monday, or the following day, and John Good said, "No, we'll send Bruce Brady out Tuesday to pick it up," and that's when we went out to pick it up.

Mr. NEAL. And then, Mr. Errichetti says something that is inaudible, and you say, "Hey, I'll come to see you tomorrow, don't worry about it," and Mr. Errichetti says, "I won't say nothing"—this one stops at "I won't say nothing," but the other transcript, the revised transcript, says, "I won't say nothing to Tony."

What did he mean, "I won't say nothing to Tony"?

Mr. WEINBERG. I haven't the slightest idea what he meant. Ask him.

Mr. NEAL. Let me ask you, you say that you would call him; you gave him a call that night, the night of March 31, 1979, didn't you?

Mr. WEINBERG. I would have to look at the record. I know I called him about picking the money up.

Mr. NEAL. The telephone record shows a call of some 4 [95] minutes' duration on your toll record, from your Long Island place, at 8:53 p.m., to Mr. Errichetti's residence in New Jersey; 8:53 p.m., March 31, the evening of the MacDonald matter. Did you call him?

Mr. WEINBERG. If the records show I called him. How many minutes was that?

Mr. NEAL. Four-plus minutes.

Mr. WEINBERG. Well, is it 4 minutes or 4-plus minutes? They don't put "plus" on the phone records. It is either 3 minutes, 4 minutes, or 5 minutes. They don't put half-minutes down.

Mr. NEAL. How long did you talk to him?

Mr. WEINBERG. Well, if it's a 4-minute call, then I may have spoken to his wife; he was not there, because Errichetti never spoke for 4 minutes yet in his life.

Mr. NEAL. Have you?

Mr. WEINBERG. Four minutes?

Mr. NEAL. Yes.

Mr. WEINBERG. Very seldom.

Mr. NEAL. Do you recollect calling him?

Mr. WEINBERG. If the record shows I called, I called him.

Mr. NEAL. The records reflect that that was an unrecorded call.

Mr. WEINBERG. Well——

Mr. NEAL. And the records reflect that you called him. [96] Why was that call unrecorded following a private conversation between you and Mr. Errichetti, when you say you're going to call him?

Mr. WEINBERG. Well, if I called him and no one was there, I wouldn't record it.

Mr. NEAL. You wouldn't have recorded it?

Mr. WEINBERG. No, I wouldn't.

Mr. NEAL. Are you saying that when you put in a telephone call, you don't do anything until you speak to the person?

Mr. WEINBERG. I have testified at trial after trial, if the person gets on the phone, I put the recorder on. We didn't have that many tapes.

Mr. NEAL. OK. It is your statement, then, that you never started recording a conversation until the speaker, the person you are calling, gets on the line; is that correct?

Mr. WEINBERG. That's correct.

Mr. **Neal**. Let me have the April 1 telephone conversation.

[Staff handing document.]

Mr. **Weinberg**. You're talking about the preamble call.

Mr. **Neal**. I am going to read you a transcript. The following is a transcript of a taped telephone call wherein Mel Weinberg called Mayor Angelo Errichetti. The tape recording runs:

> April 1, 2:30 p.m. Sunday—I am returning the Mayor's call.
> **Operator**. Yes, may I help you?
> [97] **Mel Weinberg**. Yes. Charge this to my office.
> **Operator**. Area code?
> 516-234-1420.
> **Operator**. Thank you.
> **Mel Weinberg**. Thank you.
> **Operator**. Do you want to repeat the number—516——
> **Mel Weinberg**. 234-1420.
> **Female**. Hello.
> **Mel Weinberg**. Yes, is Angelo home?
> **Female**. Yes. Who is this?
> **Mel Weinberg**. Uh, Mel.

All that was recorded. Mr. Errichetti is not on the phone yet.

Mr. **Weinberg**. That phone call was the only call I ever made out of over a thousand tapes that was preamble recorded. Mr. Amoroso was at my home, getting ready to leave for Canada, and told me to preamp the call. Why don't you play the full, what he said?

Mr. **Neal**. We're going to do that.

Mr. **Weinberg**. I appreciate that.

Mr. **Neal**. Now, my question is, did you have a telephone conversation with Mr. Errichetti on March 31, 1979, somewhere after 8, 8 p.m.?

Mr. **Weinberg**. I did not reach him there. If there's a phone thing there, that would have been taped, because that was [98] an important call. And he was not in. If it's a 4-minute call, the man wasn't there. I probably spoke to his wife.

Mr. **Neal**. For 4 minutes?

Mr. **Weinberg**. No. It doesn't have to be 4 minutes. That could be 3 minutes and 10 seconds. They charge you for 4 minutes.

Mr. **Neal**. Are you saying that every call—what you call "important call!"—you had with Mr. Errichetti, you recorded?

Mr. **Weinberg**. No, I did not say that. That phone call would have been important because we had to make arrangements to pick up the $25,000.

Mr. **Neal**. Are you saying, then, that on the evening of March 31, 1979, you made a telephone call from your place in Long Island to Mr. Errichetti's residence in Camden, N.J., for 4 minutes, and you never spoke to Mr. Errichetti; is that correct?

Mr. **Weinberg**. Don't say for 4 minutes. It could be 3 minutes and 10 seconds. They charge you for 4 minutes. I probably spoke to his wife or what, and he was not in, and it wasn't recorded.

Mr. **Neal**. Are you saying you did not talk to Mr. Errichetti on the evening of March 31, 1979, by phone?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. You are saying that?

[99] Mr. **Weinberg**. That is correct.

Mr. **Neal**. Mr. Weinberg, did you meet Mr. Errichetti on April 1, 1979, on Long Island, somewhere in the vicinity of exit 52 or 55 of the Long Island Expressway, in the early afternoon of April 1, 1979?

Mr. **Weinberg**. No, I didn't.

Mr. **Neal**. Isn't it a fact, Mr. Weinberg, that on the telephone call on March 31, 1979, in the evening, you made arrangements for Mr. Errichetti to drive up and meet you in Long Island in the early afternoon of April 1, and there, you received a portion of the MacDonald money?

Mr. **Weinberg**. That is not true.

Mr. **Neal**. Did you ever receive any portion of the MacDonald bribe money?

Mr. **Weinberg**. No, I didn't.

Mr. **Neal**. At anytime, at anyplace?

Mr. **Weinberg**. Anytime, anyplace, or anywhere.

Mr. **Neal**. Mr. Weinberg, you know the allegation was made early on in this matter, specifically, on June 10, 1980, that Mr. Errichetti met you in the early afternoon in Long Island, and delivered to you part of the MacDonald money. You are aware of that, aren't you?

Mr. **Weinberg**. I am aware, and I also had company over at my house that day; my children were over and can prove it.

Mr. **Neal**. Who?

[100] Mr. **Weinberg**. My daughter, her husband, and two kids can prove I was there all day.

Mr. **Neal**. Who have you ever told that to before?

Mr. **Weinberg**. I don't want to drag them into it.

Mr. **Neal**. You have testified before about this matter, haven't you?

Mr. **Weinberg**. I was there, assisting the grand jury, and I told them I never received any money.

Mr. **Neal**. Did you tell them your family was with you?

Mr. **Weinberg**. I didn't tell them anything.

Mr. **Neal**. Have you ever told—how many times have you testified——

Mr. **Weinberg**. The grand jury wasn't trying to hang me.

Mr. **Neal**. Mr. Weinberg, hold on just a moment. How many times have you testified under oath about this matter?

Mr. **Weinberg**. Not many.

Mr. **Neal**. More than once?

Mr. **Weinberg**. I believe the grand jury asked it; that was it.

Mr. **Neal**. Did you not also testify at a due process hearing about this matter?

Mr. **Weinberg**. Not that I remember. I may have.

Mr. **Neal**. And have you ever, to this point in time, told anyone that you were home with your family on the afternoon of April 1, 1979?

[101] Mr. **Weinberg**. I don't like bringing my family——

Mr. **Neal**. Have you ever told anybody that before?

Mr. **Weinberg**. I'm answering you, Mr. Neal. I don't like bringing my family—I have enough heartache in my family from this damn case, without bringing more family to get hurt.

Mr. **Neal**. Have you ever told anybody about this before today?

Mr. **Weinberg**. I have never told anybody, except I believe John Good knew about they were over there.

Mr. **Neal**. John Good knew they were all there?

Mr. **Weinberg**. Yes.

Mr. **Neal**. Have you told John Good that?

Mr. **Weinberg**. I may have. I believe he knows they were there.

Mr. **Neal**. Mr. Weinberg, you purportedly—let me read you a transcript that I started to read, and this transcript, prepared by the FBI, with a covering sheet [deleted] and it says as follows: "The following is a transcript of a taped conversation, a taped telephone call, between Mel Weinberg and Mayor Angelo Errichetti, of Camden, N.J. The phone call took place on Sunday, April 1, 1979, at 2:30 p.m."

Did you tell the FBI that this phone call took place at 2:30?

Mr. **Weinberg**. I believe I marked on the tape the time **[102]** that I put that in.

Mr. **Neal**. When did they pick up the tape of this telephone call?

Mr. **Weinberg**. When they picked it up?

Mr. **Neal**. Uh-huh.

Mr. **Weinberg**. I don't know. I haven't the slightest idea; probably the next day.

Mr. **Neal**. All right. And you had marked on there that the telephone call took place at 2:30 p.m.

Mr. **Weinberg**. I had marked on it; I put the dates and time. And it was the first time——

Mr. **Neal**. When did you first tell the FBI that this call, in fact, did not take place at 2:30?

Mr. **Weinberg**. I never told them it didn't place it, until they checked out the records, and they told me, and I said, "I must have made a mistake."

Mr. **Neal**. During all this time, from April 1, 1979, through at least June 10, 1980, you had never told the FBI that that call, that you marked on the tape and gave to them as having taken place at 2:30 p.m., in fact, did not take place at that time; is that a correct statement?

Mr. **Weinberg**. No, no, that's not. You said didn't take place that day——

Mr. **Neal**. "At that time," I said.

Mr. **Weinberg**. Wait, no. You're putting words. It took **[103]** place that day, but later on. The time was wrong.

Mr. **Neal**. We'll do this the hard way, Mr. Weinberg.

Mr. **Weinberg**. We can do it any way you want.

Mr. **Neal**. OK. You made a taped conversation, and you marked that taped conversation—the tape—as a conversation having taken place at 2:30 p.m. on April 1, 1979, didn't you?

Mr. **Weinberg**. What's marked on the tape, I put it down.

Mr. **Neal**. Right. And you gave that tape to the FBI, didn't you?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. And they prepared a transcript, reflecting that this conversation took place on April 1 at 2:30 p.m., didn't they?

Mr. **Weinberg**. What day was the transcript prepared?

Mr. **Neal**. Didn't they?

Mr. **Weinberg**. Well, you didn't answer my question. What day was it prepared? Was it prepared 7 months from then, or a year from then, from that time?

Mr. **NEAL**. Didn't they prepare a transcript of this taped conversation?

Mr. **WEINBERG**. They didn't prepare it that day. They probably prepared it, what, a year from that date?

Mr. **NEAL**. Mr. Weinberg, you gave them a tape marked 2:30 p.m., April 1, 1979, right?

Mr. **WEINBERG**. That's correct.

[104] Mr. **NEAL**. And you never told them from the date of this conversation until they found out on their own that this conversation did not take place at 2:30, did you?

Mr. **WEINBERG**. There was a lot of tapes the time was wrong on them.

Mr. **NEAL**. Did you ever tell them that this didn't take place at 2:30?

Mr. **WEINBERG**. Well, I wouldn't know if it didn't take place—if I put the time, I believed that was the time.

Mr. **NEAL**. Did you ever tell them that it didn't take place at 2:30?

Mr. **WEINBERG**. Why would I tell them? If I put the time, I believed that was the time.

Mr. **NEAL**. Did you ever tell them it didn't take place at 2:30?

Mr. **WEINBERG**. I just told you something. If I put the time, I believed that was the time. What am I going to say; that's the wrong time? I wouldn't have known it was the wrong time.

Mr. **NEAL**. As a matter of fact, you started the conversation by saying, "April 1, 2:30 p.m. Sunday, I am returning the mayor's call," didn't you?

Mr. **WEINBERG**. That's correct. I preambled—the only tape I preambled out of over a thousand tapes.

Mr. **NEAL**. And why do you say that you put a preamble [105] on this?

Mr. **WEINBERG**. Tony Amoroso was over to the house, and he said to me, "Preamble it because of the pickup of the $25,000."

Mr. **NEAL**. Tony Amoroso told you to put that preamble on there?

Mr. **WEINBERG**. Right.

Mr. **NEAL**. All right. Was he there when you put it on?

Mr. **WEINBERG**. I believe so; I'm not sure.

Mr. **NEAL**. You're saying Tony Amoroso was at your—where was this, just at your house?

Mr. **WEINBERG**. What do you mean, "just" at my house?

Mr. **NEAL**. Was it you house?

Mr. **WEINBERG**. Well, it was her house.

Mr. **NEAL**. OK, her house, when the call was made. And Tony was there when you read the preamble on the tape.

Mr. **WEINBERG**. I don't remember if he was actually there.

Mr. **NEAL**. Pardon?

Mr. **WEINBERG**. I believe he was there.

Mr. **NEAL**. All right. When you put the preamble on there, the tape stopped.

Mr. **WEINBERG**. Yes. I stopped it.

Mr. **NEAL**. Was he there when you stopped it?

Mr. **WEINBERG**. When I put the preamble, he was most likely there, and I just put the preamble, and——

[106] Mr. Neal. Are you saying he was most likely there? Do you know whether he was——

Mr. Weinberg. What I did, Mr. Neal, was, I put the preamble, put the recorder down until I called the mayor.

Mr. Neal. Now, wait a minute. You put the preamble on——

Mr. Weinberg. Right.

Mr. Neal. Put the recorder down until you called him?

Mr. Weinberg. Right. I didn't call the mayor right then and there.

Mr. Neal. Well, what did you do?

Mr. Weinberg. I put the preamble on to have it ready.

Mr. Neal. For whenever you got him?

Mr. Weinberg. Whenever I got him, then I was supposed to put the time down.

Mr. Neal. Was Mr. Amoroso there when you put the preamble on; are you saying he was, or he may have been, or probably, or you don't know?

Mr. Weinberg. I believe he was there.

Mr. Neal. Is that the best of your present recollection?

Mr. Weinberg. That's the best of my present recollection.

Mr. Neal. Was he there when you put the recording down?

Mr. Weinberg. Well, if he was there when I put the preamble, he was there when I put the recording down.

Mr. Neal. Was he there when you stopped the recording?

[107] Mr. Weinberg. If he was there when I put the preamble down, he was there when I turned it off and stopped it and put it down.

Mr. Neal. So you're saying if he was not there when you put the preamble on, he was not there when you stopped it?

Mr. Weinberg. If he wasn't—when I made the recording, the preamble, I don't know if he was there or not. I believe he was there. I put the recording down. I put it aside until the time that I called the mayor.

Mr. Neal. Did you put the recording down or stop the recording immediately after you made the preamble?

Mr. Weinberg. I don't know. I'm not a recording expert.

Mr. Neal. Now, wait a minute. You recognize yourself, Mr. Weinberg, that this is the only tape of the some thousand that you put a preamble on; right?

Mr. Weinberg. I said that.

Mr. Neal. And you put the preamble on, and at some moment thereafter, you stopped the recording?

Mr. Weinberg. As soon as I put the preamble on, I stopped it.

Mr. Neal. Immediately after putting the preamble on, you stopped it?

Mr. Weinberg. I don't know if it's immediately. I haven't heard the tape. I put the preamble on, and then stopped it, and when I made the call to the mayor, I put it back on.

[108] Mr. Neal. What did you do after you stopped the recording?

Mr. Weinberg. What did I do? I most likely was watching TV.

Mr. Neal. So you put a preamble on a tape recording, stopped the tape recording, and most likely started watching TV?

Mr. Weinberg. That's right.

Mr. **Neal**. And how long did you watch TV?

Mr. **Weinberg**. I really couldn't say. I don't know. I haven't the slightest idea.

Mr. **Neal**. When you finally made the call, what did you do?

Mr. **Weinberg**. I put the recording on.

Mr. **Neal**. You put it back on?

Mr. **Weinberg**. That would be correct.

Mr. **Neal**. Do you know when you made the call and actually talked to Mayor Errichetti?

Mr. **Weinberg**. I don't remember when I made the actual call, or what. Whatever I did, whatever the mayor said, I put down on the recording.

Mr. **Neal**. When you picked the recording back up, you don't know how many hours later you actually made that phone call after you put the preamble on and put the recorder down?

Mr. **Weinberg**. I answered that, Mr. Neal. I said no, I don't remember.

Mr. **Neal**. Would it refresh your recollection to say that [109] the call was actually made at 4:54 p.m., some 2 hours and 24 minutes later?

Mr. **Weinberg**. If you say so.

Mr. **Neal**. Did you, in making—after you put the preamble on, had you picked up the phone at all?

Mr. **Weinberg**. What do you mean by "pick up the phone"?

Mr. **Neal**. When you are talking into the recording device, had you picked up the phone and dialed—had you done anything with the phone when you put the preamble on?

Mr. **Weinberg**. I don't remember.

Mr. **Neal**. You don't remember?

Mr. **Weinberg**. No. Do you expect me to remember that far back? Play the tape; you'll see what I done.

Mr. **Neal**. You know better than that, Mr. Weinberg.

Mr. **Weinberg**. Why do I know better?

Senator **Mathias**. Senator Rudman?

Senator **Rudman**. Would counsel yield for a question?

Mr. **Neal**. Yes, sir.

Senator **Rudman**. Mr. Weinberg, this was the only preamble out of a thousand or so——

Mr. **Weinberg**. Over a thousand. It's the only one I ever made.

Senator **Rudman**. What was the purpose of the preamble?

Mr. **Weinberg**. Because Mr. Amoroso—we had to pick up $25,000 from the mayor, a kickback to fix the yacht up—and he [110] wanted it down on record. And he was over at my house. He was going to Canada, or I think he was going to Canada——

Senator **Rudman**. And what did he want on record?

Mr. **Weinberg**. The telephone conversation when to pick the money up. And he said, "Put a preamble in on it."

Senator **Rudman**. Why?

Mr. **Weinberg**. Because they like all their tapes preambled.

Senator **Rudman**. What do you mean by a preamble?

Mr. **Weinberg**. To say, "This is Melvin Weinberg, working undercover, on such-and-such a date," and where I'm at, and all, and I never did it.

Senator **Rudman**. All right. But this time, you did?

Mr. WEINBERG. This time, he was over at the house, and he told me to do it, and I done it.

Senator RUDMAN. Did you put down the date?

Mr. WEINBERG. I don't know if I put the date or what—I put down the date, probably; my name, wherever it was, and say, "I'm calling Mayor Errichetti."

Senator RUDMAN. Well, what you said was, "April 1, 2:30 p.m., Sunday, I'm returning the mayor's call."

Mr. WEINBERG. Right.

Senator RUDMAN. Did the FBI want that because there was a payoff coming, and they wanted to know the date and the time of the call?

[111] Mr. WEINBERG. Right.

Senator RUDMAN. So you understood why they wanted a preamble, although you didn't agree with it most of the time; is that correct?

Mr. WEINBERG. Yes—well, it's not that I disgreed with them, Senator. One time, we were making a preamble in a hotel, and the mayor walked in on us and nearly caught us, [deleted] and unfortunately, it was a platform bed, and it came flying back out again.

Senator RUDMAN. Well, there wasn't much chance of Mr. Errichetti walking in on you at your house, was there?

Mr. WEINBERG. No, but that's why I never made a preamble. And another reason, Senator, your see, nobody wants to believe we didn't have tapes. I mean, you go to remember it was a shoefly operation at this time, and there was never any tapes.

Senator RUDMAN. All right, well, let me just understand something, whether there were not enough tapes, there were not premables, but there was a preamble on this particular day——

Mr. WEINBERG. That is correct.

Senator RUDMAN. And if you have a preamble, they'd like you to be accurate, wouldn't you?

Mr. WEINBERG. Well, I guess they would like to be accurate, but I'm not used to putting a preamble down. I did what he told me, he left—he was there, he went away, and I had it, and [112] the mayor wasn't in, and I called him.

Senator RUDMAN. Mr. Weinberg, I just want to ask you a question, a simple, common understanding of how people act, and I want you to explain something to me which I just do not understand, and I would like you to tell me the reason, because you obviously have a reason. And your recollection isn't really important, because your reason today would be as good as your reason 2 years ago.

Why would you say in a tape recorder the date—which was correct, April 1—the time, which was correct, 2:30 p.m. on Sunday, and the purpose of the call, and then put the tape recorder away and make the call 2½ hours later? Would you explain why you would do that?

Mr. WEINBERG. All right. Because we probably called the mayor at the time, and he wasn't there; no answer.

Senator RUDMAN. Have you ever testified to that before?

Mr. WEINBERG. I don't remember testifying much about this here taping, to be honest with you.

Senator RUDMAN. So your testimony is that——

Mr. WEINBERG. Senator, I can answer your question——

Senator RUDMAN. Well, let me finish my question. Your testimony, then, is that the reason that you would put the tape recorder down for 2 hours and 24 minutes, according to this information, is because you were not able to complete the call at 2:30?

[113] Mr. WEINBERG. That is correct. Look, I didn't have to turn that tape in, if I didn't want to. I mean, no one would even know if I made it. I turned every tape in, good or bad Some were bad against me. I made a lot of mistakes on the tape recorder. I'm not a tape man. I mean, this was all new to me, making these recordings. This ain't the first time I screwed up on a tape.

Senator RUDMAN. It's not because perhaps you wanted the call to be thought to be made at 2:30, when essentially, you were someplace else?

Mr. WEINBERG. Senator, I knew that all phone records coming in, right, that there would be a record of all phone records, that we put the phone call on the business phone so they would have a record. So, if I was trying to hide it, I wouldn't have made the phone call on the credit card; I would have put it on my phone.

Senator RUDMAN. So your testimony is that you were unable to complete the call at the time that the preamble was stated, and continued to try to call until you reached him at 4:24?

Mr. WEINBERG. That is correct. And like I said, I know there's a record. I knew from the beginning all phone records were going to be subpoenaed. And if I didn't want a record of that call to, say, show at 4:30, or whatever time it was, all I had to do was make it on my phone in the house and there was no record.

[114] Senator RUDMAN. Well, what would you say if there was evidence that there was someone in Errichetti's home during that time, and the phone did not ring?

Mr. WEINBERG. Well, if there was, they never answered the phone.

Mr. WHEELER. Mr. Weinberg, I don't want to belabor this too much, but I have to to try to clarify something. Is your testimony that when you put the preamble on the tape where you said, "It's 2:30 p.m.," that it was in fact earlier than 2:30 p.m., or was it 2:30 p.m. at that time?

Mr. WEINBERG. I put the—as far as I remember, all right, if I put down 2:30, that means I tried him at 2:30, and nobody was home. And then I went back later, at the time, and 2:30 was marked on the number already, and I never changed it. This ain't the first time I marked the wrong times.

Mr. WHEELER. I understand what you're saying, but the thing that I want to make clear is, is it your testimony that when you put on the tape; "It is 2:30 p.m.," that it was, in fact, at that time 2:30 p.m.

Mr. WEINBERG. At the time when I put down there, it had to be 2:30 p.m.

Mr. WHEELER. All right. Now, you also just said a couple of minutes ago, in response to one of Senator Rudman's questions, that you probably put the preamble on, tried to call the mayor and he wasn't there, and that's why you turned [115] off the recorder; is that right?

Mr. WEINBERG. That would be about correct; yes.

Mr. **Wheeler**. All right. Are you aware that the FBI did a laboratory analysis of that tape, and the first part of the analysis of the FBI says: "An oral examination of Q3," which is the tape, "revealed that the recording was stopped following the preamble and preceding the dial tone, near the beginning of Q3." Which therefore states, Mr. Weinberg, that you turned the recorder off immediately after putting the preamble on and before trying to call Mayor Errichetti. Does that refresh your recollection as to what you actually did?

Mr. **Weinberg**. Well, I just said to you, if I put the preamble on when Tony was there, I turned the recorder off. In fact, that tape that we used was a used tape; it wasn't even a new tape.

Mr. **Wheeler**. So, in fact, what you did was to put the preamble on and immediately turn it off, before you ever tried to call Mayor Errichetti?

Mr. **Weinberg**. Right.

Mr. **Wheeler**. Now, you said in response to one of Mr. Neal's questions that you never turned the recorder on until you got the person you wanted to talk to, and this was very unusual.

Mr. **Weinberg**. That is what I always did except for this call.

[116] Mr. **Wheeler**. Except for this instance.

Mr. **Weinberg**. Whenever I spoke to someone, I put the tape on then.

Mr. **Wheeler**. When you got the person you wanted?

Mr. **Weinberg**. As soon as the person—because a lot of times, you would call the mayor in his office, right, you had to go through two girls, and then they say he's not there, and we wasted a tape. We didn't have that many tapes.

Mr. **Wheeler**. So you wait until you get the mayor?

Mr. **Weinberg**. I wait until I got him, and then I put it on.

Mr. **Wheeler**. Let me read to you from three transcripts that are pulled at random, Mr. Weinberg. Here is one dated June 20, 1979. This tape begins:

> Hello?
> **Mel Weinberg**. Yeah. Dani?
> DA [Dani Anise]. Yeah?
> **Mel Weinberg**. Is he in?
> **Dani Anise**. Hi, doll. How you doing?
> **Mel Weinberg**. Fine, hon.
> **Dani Anise**. OK. Hold on.
> **Mel Weinberg**. Right.
> **Angelo Errichetti**. Good morning.

Another tape—this one is dated June 19, 1979:

> DA [Dani Anise]. Mayor's office.
> [117] **Mel Weinberg**. Yeah, Dani.
> **Dani Anise**. Yeah.
> **Mel Weinberg**. How you doing, doll?
> **Dani Anise**. OK, babe.
> **Mel Weinberg**. All right.
> **Dani Anise**. Hold on. He's on another phone right now.
> **Mel Weinberg**. ——

Et cetera, et cetera, et cetera.

Mr. **Weinberg**. I——

Mr. **Wheeler**. A third tape—this one is dated June 27, Mr. Weinberg. This one begins like this:

DA [Dani Anise]. Mayor's office.
MEL WEINBERG. Yeah. Is this Dani?
DA. Yes.
MEL WEINBERG. You—you sound disgusted, Dani.
DA. Hiya, doll. No.
MEL WEINBERG. I want to tell you——

Et cetera, et cetera, et cetera.

These don't sound, Mr. Weinberg, like calls where you don't turn the recorder on until you get the person you want to speak to, do they?

Mr. WEINBERG. If you call the Mayor's office, you don't get Dani right away. You get this girl at the switchboard. And after you get the girl at the switchboard, I put the recorder on. Two, we use two different types of tapes. Some tapes have a longer delay, and some have a shorter delay—it's [118] the first part. And if you take them out and test them, you'll see the difference.

Senator MATHIAS. Malcolm, at that point, I think we'll take a recess. The committee will stand in recess until 2.

[Whereupon, at 12:30 p.m., the committee was recessed, to reconvene at 2 p.m.].

[119] AFTERNOON SESSION

[Whereupon, at 2:10 p.m., the committee reconvened, the Hon. Warren Rudman presiding.]

Mr. NEAL. Shall I proceed, Senator?

Senator RUDMAN. Yes, proceed.

Mr. NEAL. Mr. Weinberg, there is a document [Deleted] [2] dated April 2, 1979, and it says, "Weinberg called Errichetti at 2:30 p.m., 4-1-79." Did you tell the FBI that you had called at that time?

Mr. WEINBERG. No, I didn't tell the FBI. I gave them the tape.

Mr. NEAL. Now, I want to be sure that the record is clear on this. You may have answered it. If you have, I apologize for asking it again. It is your testimony that you never told any of these so-called middlemen—and I am including Errichetti, specifically; Criden, or anyone else—that they were to tell these targets, Congressmen, that all they were doing was playacting; that they were not expected to do anything, and so forth?

Mr. WEINBERG. I told—the only thing I told Errichetti and Criden—well, actually, it wasn't even Errichetti because Criden was the one that was bringing them in—was that the Congressmen that came in have to pick up the money and say what they're going to do. That's the only thing we told them, and they were not targets. They're the ones that gave us the people. I didn't know one Congressman from another.

[120] Mr. NEAL. I am trying to make this an overall question. I will break it down to each person if I have to, but to try to move on, it is your statement, then, that you never told Errichetti to tell these people who were coming before the cameras that they were simply playacting; that they would never be called upon to do anything about their official functions?

Mr. WEINBERG. No; I never told them that.

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[2] The omission of a citation to a confidential document in these hearings is indicated by "[Deleted].," for a complete explanation of why, see S. Rep. 97-682, 97th Cong., 2d Sess. V-VI (1982)

Mr. NEAL. You told them simply that they would have to promise to deliver?

Mr. WEINBERG. No; nobody can promise anything. I told them that the Congressman would have to tell us what he's going to do, whatever he can do to help us, plus they would have to pick the money up. That was the only thing that was our groundrules.

Mr. NEAL. Those were the only groundrules you had?

Mr. WEINBERG. If you look at your tapes, you'll see with Thompson that we would not pay him the first time because he wouldn't pick the money up.

Mr. NEAL. Yes; I understand that.

Mr. WEINBERG. And if you go back to Myers——

Mr. NEAL. But you had a number of unrecorded meetings with Mr. Errichetti, and it is your position that not at those meetings or at any other time did you tell Mr. Errichetti, "Look, tell these people they will not have to do anything, we will never call on them, it is all bullshit, it is [121] playacting?"

Mr. WEINBERG. I never told the mayor that. Now, you have to remember the mayor only actually brought one guy into us, Congressman Myers.

Mr. NEAL. Did you ever tell anybody that?

Mr. DIENST. Mr. Neal, could we let the witness finish answering the question before you ask another question, please?

Mr. NEAL. Did you ever tell anybody that?

Mr. WEINBERG. The only guy that I ever said that was playacting was the one with Senator Williams, which he has said he didn't listen to me.

Mr. NEAL. That's the only time you ever said that?

Mr. WEINBERG. That's the only time I ever said it.

Mr. NEAL. OK. Now, Mr. Weinberg, did you, in January 1979 or at any other time, receive a microwave oven from Mr. Joey DiLorenzo?

Mr. WEINBERG. Mr. Neal, I'll answer your question. I never received any gifts from Joey DiLorenzo or Errichetti.

Mr. NEAL. In February or March 1979, did you receive a Betamax video recorder from Mr. Joe DiLorenzo?

Mr. WEINBERG. I answered you. I did not receive any gifts.

Mr. NEAL. Do you know where the Ionosphere Lounge is at LaGuardia Airport?

Mr. WEINBERG. Yes, sir, I do.

[122] Mr. NEAL. Have you ever been in there?

Mr. WEINBERG. I've been in a lot of the lounges—the Ionosphere, the Pan Am one.

Mr. NEAL. Did you ever on any occasion—and I'll say any occasion, but directing your attention to February-March 1979—did you ever meet DiLorenzo and his girlfriend in the Ionosphere Lounge at LaGuardia Airport?

Mr. WEINBERG. I testified—I may have met him, but I don't know if I met him there, because I met him at the airport a couple of times. But I never received any gifts from him.

Mr. NEAL. Did you ever meet him in the Ionosphere Lounge of LaGuardia Airport?

Mr. WEINBERG. As far as I remember, no.

Mr. NEAL. Did you ever meet his girlfriend, Debra Procacci?

Mr. WEINBERG. I met his girlfriend a few times.

Mr. NEAL. In or around April 1979, did you ever receive a stereo system, a pair of Genesis III speakers and a Harman-Kardon receiver from DiLorenzo?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. Did Joey DiLorenzo ever put a microwave in your car or truck or any vehicle associated with you?

Mr. WEINBERG. No; he didn't.

Mr. NEAL. Did Joey DiLorenzo at any time ever put a [123] Betamax recorder in your car or truck or any vehicle associated with you?

Mr. WEINBERG. No; he didn't.

Mr. NEAL. Did you ever claim that the pickup truck that you said you drove was your brother-in-law's?

Mr. WEINBERG. No; I didn't. All you had to do was check the license, which the mayor checked the license on my truck already.

Mr. NEAL. Mr. Weinberg, you recognize that—by the way, before her death, Mrs. Marie Weinberg lived at a home in Tequesta, Fla., did she not?

Mr. WEINBERG. Tequesta, Fla.; yes.

Mr. NEAL. Tequesta. Are you aware that two Genesis stereo speakers, one Harman-Kardon stereo receiver, on Sony Betamax video recorder, one General Electric microwave oven, and three 17-inch Sony television sets were found in her home?

Mr. WEINBERG. I'm aware that they were found in my home. It was not my home; it was her home.

Mr. NEAL. Did you ever receive any television set from Joey DiLorenzo at any time?

Mr. WEINBERG. No, I didn't.

Mr. NEAL. Were you aware that the serial numbers on the microwave oven found in Marie Weinberg's home had been removed?

Mr. WEINBERG. I was told that on 20/20.

Mr. NEAL. Are you aware that two of the serial numbers [124] on the television sets had been removed?

[Whereupon, Senator Mathias assumed the chair.]

Mr. WEINBERG. I was told that on 20/20.

Mr. NEAL. Do you have any idea where Mrs. Marie Weinberg would have received those items?

Mr. WEINBERG. You don't want to go into that, what I think about her death, all right?

Senator MATHIAS. What was that? I didn't hear it.

Mr. WEINBERG. I said we don't want to go into what I think about her death. But if you want to open up another kettle of worms, I'll gladly speak about it.

Mr. NEAL. Mr. Weinberg, do you want my question read back?

Mr. DIENST. Yes, Counsel, may we ask that you do read back the question for Mr. Weinberg, then perhaps he can give a responsive answer to it?

Mr. NEAL. Would the reporter read back my question, leaving out the dialog?

[Whereupon, the reporter read back from the record.]

Mr. WEINBERG. To go back to 1977, the microwave was at Central Islip where she lived. The FBI agents seen it. She cooked on it and we all seen it there. The TV sets, I seen. She had sets in the house.

She did not move, according to the statements she made—move the sets down to Florida from Central Islip.

[125] The other stuff, I have no idea. My son gave a statement to the FBI about it. I haven't the slightest idea—the stuff that they said they found in the house, Mr. Jack Anderson and Mr. Bass, where it came or if that's the stuff, with the scientologist involved in it, too.

Mr. NEAL. You told the FBI, according to an affidavit by Mr. Deaton of the FBI—do you know a Mr. William L. Deaton?

Mr. WEINBERG. Yes, I know him.

Mr. NEAL. You told Mr. Deaton that you did not know where these items had come from.

Mr. WEINBERG. That is correct.

Mr. NEAL. That was a correct statement when you made it and it's a correct statement today?

Mr. WEINBERG. Except for the microwave. I knew the microwave was in the house in 1977 or 1978. It was seen by the FBI before he knew the mayor. I did not live home with my wife.

Mr. NEAL. Mr. Weinberg, did you ever remove any serial numbers from those items I have just described?

Mr. WEINBERG. Not only did I never remove any serial numbers, I did not live there and I didn't have a key to her house.

Mr. NEAL. Mrs. Weinberg gave an affidavit in which she stated that in 1978 or 1979, Mel Weinberg brought home three Sony Trinitron 17-inch television sets, an entire stereo system with two speakers, and a Betamax recorder, and you told her they [126] were from a friend. Did you do that?

Mr. WEINBERG. I did not. Why don't you hear the rest of the statement she said when she was wrong? That woman was driven to commit suicide.

Mr. NEAL. Your answer is——

Mr. WEINBERG. Why don't you bring out about Senator Williams calling her up at the hotel there trying to speak to her?

Mr. NEAL. Did you ever tell Mrs. Weinberg to hide any of these items?

Mr. WEINBERG. I never spoke to her about hiding any items or even about that she was speaking to Jack Anderson.

Mr. NEAL. Your answer is no?

Mr. WEINBERG. That's correct.

Mr. NEAL. A long "no."

Mr. WEINBERG. Double long.

Mr. NEAL. In this same affidavit, Mrs. Weinberg said that in 1980, Melvin Weinberg told her to hide the microwave and the Betamax. Is that inaccurate?

Mr. WEINBERG. Her whole statement is inaccurate, if you put the whole statement in the record.

Mr. NEAL. She then said that she saw you remove serial numbers from the microwave oven. Did she see you remove them?

Mr. WEINBERG. I told you I didn't know anything about the stuff. I never was there. I don't know where she got it. [127] And it was not my home and I did not live there.

Mr. NEAL. Mr. Weinberg, did Mrs. Weinberg have an account at the First Marine National Bank & Trust Co.

Mr. WEINBERG. Yes; she did.

Mr. NEAL. Do you know an FBI agent by the name of Steve Bursey?

Mr. WEINBERG. Yes; I do.

Mr. NEAL. Were you living with Mrs. Weinberg on February 25, 1980?

Mr. WEINBERG. No; I wasn't.

Mr. NEAL. Did you receive a check from Mrs. Weinberg dated February 25, 1980?

Mr. WEINBERG. Mr. Neal, why don't you put—I have copies of those checks and it's marked on my account. I deposited money in her account. I also have—a book was found in her house there—the police gave it to me—naming every check she made out in her account, and those checks was my money that I gave her to pay some bills. And she gave me a $300 check when I was coming up north and I cashed that check at Mr. Bursey's bank, where he signed it. Don't take it out of context like I was paying Mr. Bursey off.

Mr. NEAL. This check is endorsed, "Mel Weinberg, pay to the order of Steve Bursey——

Mr. WEINBERG. That's correct.

Mr. NEAL. Signed, Steve Bursey.

[128] Mr. Weinberg, perhaps I should say to you that there are certain questions that I think relevant, and whatever answer you want to give to them is the answer we'll accept.

Now, what was the purpose of giving this check, or endorsing this check to FBI agent Steve Bursey?

Mr. WEINBERG. I came up to New York and out to Jersey with Steve and I needed some cash, and I had a check made out to me, not like Jack Anderson says, made out to him. It was made out to me, that check for $300.

Mr. NEAL. Didn't I say it was made out to you and endorsed to Mr. Bursey?

Mr. WEINBERG. I also know what Jack Anderson said. And I cashed the check at this bank for the cash and he signed the back.

Mr. NEAL. And you simply used that as a means of getting $300 cash, and that's it?

Mr. WEINBERG. I needed some cash. I was on the road.

Mr. NEAL. All right. Now, on the same date, there's a check drawn by Cynthia—that's Marie, isn't it?

Mr. WEINBERG. That's correct.

Mr. NEAL. Weinberg, to Bruce Brady in the amount of $900. Do you know what that check was about?

Mr. WEINBERG. Yes.

Mr. NEAL. What was that for?

Mr. WEINBERG. Mr. Brady came down to Florida to buy a [129] home and he cashed in war bonds down there. And I needed some cash and I took a check off her made out to him because she had my money in her account, because I had to pay some bills for moving her down there. I owed some furniture bills and I had some storm windows put on.

And if you ask the FBI for the book; I gave it to them. It shows you right in there why it was made. She made out the check to him. He gave her the $900 cash and he deposited it in his savings account in New York.

Mr. NEAL. Now, Mr. Weinberg, let me move on to the Ozzie Myers incident—the Congressman Myers incident. You remember that?

Mr. WEINBERG. Yes.

Mr. NEAL. I believe this videotape transaction occurred on August 22, 1979.

Mr. WEINBERG. I'm not sure.

Mr. NEAL. Whatever the day it was, and I believe that's the date that is correct, did you meet with Mr. Angelo Errichetti, just the two of you, before that payoff occurred?

Mr. WEINBERG. I was sent downstairs to meet the mayor to tell him that we would not give him $100,000; we were only going to give him 50.

Mr. NEAL. Was the conversation recorded?

Mr. WEINBERG. No; it wasn't.

Mr. NEAL. Did you in that conversation tell him to be [130] sure and explain to Congressman Myers that this was all playacting, that he would never be called upon to do anything, and give him the scenario to give to Mr. Myers?

Mr. WEINBERG. That's not true. The whole conversation was about that he was mad that they cut it from 100 to 50, and he started screaming.

Mr. NEAL. Excuse me, Mr. Weinberg. You understand, and counsel will tell you, that we get various different, conflicting information. Now, this committee has, in my judgment, tried to be totally and completely fair. If we get one version of the events, it seems to us fair to ask somebody who may have another version of the event. And if you would just give us your version without editorializing, we won't be here for a week.

Mr. WEINBERG. What I'm trying to tell you, if you take the tape, after Ozzie Myers left and Errichetti came in, he started screaming at Tony why he cut it down.

Mr. NEAL. I'll ask you again. When you went down to meet with Mr. Errichetti before the Myers meeting, did you tell him to tell Congressman Myers it's all playacting, he'll never be called upon to do anything; all he's got to do is go before the camera and get his money.

Mr. WEINBERG. No; I didn't.

Mr. NEAL. OK, fine. Now, Mr. Myers received a certain amount of money, did he not?

[131] Mr. WEINBERG. That's correct.

Mr. NEAL. Did you ever meet thereafter with Mr. Errichetti, specifically in the men's room of the Hilton Hotel at the John F. Kennedy Airport?

Mr. WEINBERG. At John F. Kennedy?

Mr. NEAL. Yes, sir.

Mr. WEINBERG. Are you talking about the Myers payoff?

Mr. NEAL. Yes, sir, after the Myers payoff.

Mr. WEINBERG. The Myers payoff wasn't at the Hilton Hotel.

Mr. NEAL. I understand that.

Mr. WEINBERG. It was at the International Hotel.

Mr. NEAL. I understand that, but my question is did you, at some time thereafter—let me just put the whole thing out. Did you, at some time after the Myers transaction, meet with Mr. Errichetti at the men's room of the Hilton at the JFK Airport, and receive $5,000 from him?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. All right. Mr. Weinberg, did you ever call up—in or around October 1979, did you ever call up Mr. Errichetti and tell him that Tony is in trouble, he has been gambling, you're afraid the sheik is going to catch on, and ask him for some money?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. Did you receive $3,000 or any other amount of [132] money on October 21—specifically, October 21, 1979—from Joey DiLorenzo in the Ionosphere Lounge at LaGuardia Airport?

Mr. WEINBERG. No; I didn't. I don't think we were speaking to the mayor in October.

Mr. NEAL. Your answer is you did not, on October 21, 1979—and if you have a problem with the date, let me know—on October 21, 1979, you did not receive an envelope containing currency from Joey DiLorenzo?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. Did you ever at any time, at any place, receive an envelope from Joey DiLorenzo containing currency?

Mr. WEINBERG. No; I didn't.

Mr. NEAL. Mr. Weinberg, what was the procedure—strike that. Do you remember something that has come to be called the asylum scenario? Can I use that shorthand method, or would you want me to spell out what I understand to be the asylum scenario?

Mr. WEINBERG. You'd better spell it out. I never heard it.

Mr. NEAL. All right. This was a story that the sheik might be kicked out of his homeland and might want to come to America and might need friends to get him in and keep him here. Do you understand now what I mean?

Mr. WEINBERG. I understand now what you mean.

[133] Mr. NEAL. When was the first time you ever heard that spelled out?

Mr. WEINBERG. I talked about it. Actually, when it was actually put out was on the yacht going up to Fort Lauderdale, and it was Tony that brought it up. But I did speak about it before on a tape which I was questioned about with Katz. But Katz actually was leading. I was just following the newspapers and what the papers said, which we used for a lot of excuses.

Mr. NEAL. You are obviously—and this is no criticism—but you have prepared for your testimony today and you are aware that we're speaking of a tape on July 14?

Mr. WEINBERG. I don't know the date, but——

Mr. NEAL. Well, when did you last review a transcript of this conversation?

Mr. WEINBERG. I haven't reviewed the transcript.

Mr. NEAL. You've never reviewed the——

Mr. WEINBERG. I have reviewed it, but I haven't reviewed it in some time.

Mr. NEAL. Months?

Mr. WEINBERG. Oh, I really can't say.

Mr. NEAL. Did you review it yesterday?

Mr. WEINBERG. No, I didn't.

Mr. NEAL. The day before?

Mr. WEINBERG. No, I didn't.

Mr. NEAL. Anytime this week?

[134] Mr. WEINBERG. I told you I was up to the FBI building on a completely different matter.

Mr. NEAL. Who were you with up at the FBI building?

Mr. WEINBERG. Mr. Wilson and Mr. John Good.

Mr. NEAL. Mr. Good?

Mr. WEINBERG. Good was there, right.

Mr. NEAL. Was Mr. Good there Monday?

Mr. WEINBERG. He brought me down.

Mr. NEAL. He brought you down from New York?

Mr. WEINBERG. Right.

Mr. NEAL. When did you come down from New York?

Mr. WEINBERG. Monday.

Mr. NEAL. Did Mr. Good stay with you all day Monday?

Mr. WEINBERG. He was in the FBI building with me there.

Mr. NEAL. OK. Was he in your presence?

Mr. WEINBERG. No, he was in another room working on a 302 or something.

Senator RUDMAN. If I might just interrupt for a moment, without getting into detail I just want to check your answer. Are you telling the committee here today, Mr. Weinberg, that you're here in Washington this week at the FBI building on business that has absolutely nothing to do with Abscam?

Mr. WEINBERG. Well, it has something to do with Abscam, but not with this committee.

Mr. NEAL. In this conversation with Mr. Katz on July [135] 14—and I have no objection to your counsel seeing this, but I hope that I don't have to read it all—these statements are made.

You say: "Yeah, but the will—this is how these guys plan years away, you know. They know—I told you once before that they only got so many years of this, you know."

Katz says, "Yeah. They're not going to have this all the time."

And then Katz says, "They got to plan ahead, do it right. Now, say, they're making $100 million here, and this. Will they want to be in a position when this thing stops—they'll make hundreds of millions by the investments."

You say, "That is correct, you know, not like the idiot from Libya. That's what he wants to declare on us now, you know." Katz says "Yeah," and you say, "That's a moron because he thinks, you know, they're in the driver's seat, but how long are they going to last? Then they're going to need help. They'll—the—they'll screw you, but we're so stupid, we'll give them help. But they realize—and another thing they're worried about—they're worried deeply about—is when they—you take the shah, right? They won't let him in this country, right?"

"Right."

"And that these guys are nervous about that because they realize that if they get overthrown, which eventually they'll [136] all be overthrown."

"Uh-huh."

"Where can they go? They know if they come to this country, they got security, all right?"

"Right."

And then you say, "Well, no doubt about it, but in the meantime they can't understand this. See, they were given the word that they'd always be welcome here, and now this dumb bastard went and won't let them in and they don't understand it."

And you say, "Well, you don't take care of friends that way," and go on, "And they realize that the handwriting is plain on the wall. They may have another 10 years, tops." And you go on to talk about security in this country.

And then Mr. Katz says, "Well, they need a lot of friends in Congress." You say, "Right. Well, this—what do you think we're doing for them?" Katz laughs and says: "Then they need a lot of friends in Congress." And you say: "What do you think we're trying to do?" And Katz says: "Yeah, and you say: "uh-huh." And Katz says: "I see," and so forth.

Now, were you spitting out the asylum scenario at that time?

Mr. **Weinberg**. I believe, as you call the scenario—I believe that it was spoken over, but at the time we was strictly talking about Senator Williams, not for any Congressman [137] or anything, because we were trying a stall tactic because Katz had a payment to make on that mine in Virginia, I think it was. And they wanted to know when we were coming up with the money, and we were just talking in general.

Mr. **Neal**. Had anybody at this time suggested that you talk about this matter to anybody you were talking to?

Mr. **Weinberg**. No.

Mr. **Neal**. This was purely on your own?

Mr. **Weinberg**. It was clearly on my own. We may have talked about it before, but I really don't remember. But it was strictly on Williams, not thinking about any Congressman.

Mr. **Neal**. Speaking on Senator Williams, you say: "They want every political friend they can get. They may never even want a favor from them, but they want to know they got somebody." Were you speaking of the sheik then, wanting to know he's got somebody?

Mr. **Weinberg**. Offhand, it may have been. We have been just speaking about Arabs or something.

Mr. **Neal**. And Katz says: "Uh-huh, right," And you say: "You follow me?" "Yes" You say: "They know the mistakes the shah made. The shah just took care of the big shots, all right? And they realize they need people, too." And Katz says: "Now, they want—now, they want from the ground up." And you say, "Because if they get enough pressure on them people, right, and they can put pressure on Congress, which [138] they can." And Katz says: "Right." And you say: "They would have—they have—they have a better chance than the shah has. But what happened with the shah, he just took care of a few big shots—Kissinger, the President and a few other guys. And they, only a small few of them they can't do nothing because the people are the ones rejecting. Congress stopped them."

"Uh-hun."

And you say: "They don't"—and I can only assume you're referring to the sheik—"they don't want to make the same mistake."

"Yes, and they realize that."

And you say: "They want every—they don't give a damn how important he is. As they told us, 'sign them up'." And then you say: "We have an appointment the 6th of August with a Congressman."

What Congressman was that?

Mr. WEINBERG. I don't know. August 6th?

Mr. NEAL. Yes, sir. Did you have an appointment with a Congressman on August 6th?

Mr. WEINBERG. No. we didn't.

Mr. NEAL. And Katz says: "Uh-huh." And Weinberg says: "And this is what they want, and like I said, they don't give a damn who it is. As they told us, 'sign them up'."

Now, If that's not some spitting out of the asylum scenario, I don't recognize it. My question is, did you have a [139] conversation with Mr. DeVito or anybody—Mr. Good or anybody who told you to start that line?

Mr. WEINBERG. No.

Mr. NEAL. This was all on your own?

Mr. WEINBERG. We used to take the newspapers when somebody would call us, all right? And it was a stalling tactic. We would take whatever was in the news and use that for the stalling tactic. And it probably was all on my own because no one ever told me.

The first time I actually heard that we were going ahead was on the boat and then the mayor start hitting us; he's got certain people lined up.

Mr. NEAL. So, at this time, if the undercover operation was directed at Members of Congress, it was purely your talking?

Mr. WEINBERG. It was purely my talking.

Mr. NEAL. Now, then, did you have any conversation with Mr. Amoroso between this date and July 26, the date of the boat trip on the Left Hand, regarding this type scenario?

Mr. WEINBERG. I may have. I mean, I really don't remember. He may have said something to me. I always thought he came out of the blue. How it started was the captain on the boat started telling us about Somoza there—we passed his house—saying, you know, that he can't get to stay in this country, and that's how it came about, I always thought. But [140] I wasn't standing next to Tony when he was speaking to Criden.

Mr. NEAL. Do you think the asylum scenario, then, developed by Mr. Amoroso on that boat? Is that what you're saying?

Mr. WEINBERG. They may have been speaking about it and pushing it around, and we got it from there or we took it from the paper. We talked among ourselves. I really don't remember, but the first time that I actually heard that they were going to use it was on the boat.

Mr. NEAL. What do you mean you heard you were going to use it?

Mr. WEINBERG. Well, the first that Tony, on the boat, gave it to Criden and then Criden spoke with the mayor, or however it worked, because I really don't know myself, and he came back, that was the first time that we really started using that scenario.

Mr. NEAL. Did you hear Mr. Amoroso talking to Mr. Criden about that?

Mr. WEINBERG. Partly, not all of it.

Mr. NEAL. What did you hear?

Mr. NEAL. I don't remember exactly what I heard. We were on topside there and there was few people on there and I was moving around.

Mr. NEAL. You don't recollect any part of what you heard?

Mr. WEINBERG. I remember them talking about Somoza and [141] the house he lived in. The captain was telling us about there was a party on the yacht there and they moved all the drapes, and that he wants to stay in this country, but the Government won't let him. And I heard part of that.

And then I heard them saying that, well, going back, that's what Sheik Yassir needs is protection in case they try to throw him out.

Mr. NEAL. You heard Mr. Amoroso say that?

Mr. WEINBERG. I think so, thinking back. I can't really be sure if I heard him say it.

Mr. NEAL. You testified one time—and I'd like to give you a chance to straighten this up—you testified at a Philadelphia due process hearing on July 9, 1980, and I'm quoting you: "The asylum scenario was decided on that boat. Actually, it was Criden who gave it to us."

And then you were asked the question by counsel: "You are saying that Mr. Criden put it in your mind that you would pretend to represent a sheik who needed to come to the United States?" And you say: "Well." And then counsel says: "Yes or no?" And you say: "Well, directly, yes."

Mr. WEINBERG. I remember saying that, and I corrected it later on in the trial because I was there. I came out of a sickbed and I couldn't even understand half the questions they were asking me.

Mr. NEAL. Now, when did you next, after the boat trip, [142] hear about carrying on with this tale in respect to Congressmen.

Mr. WEINBERG. I believe it was when the mayor came back to us and gave us some names.

Mr. NEAL. Gave you some names of Congressmen?

Mr. WEINBERG. Right.

Mr. NEAL. Did he give them to you?

Mr. WEINBERG. Yes.

Mr. NEAL. All right. Let me ask you about that now. Mr. Weinberg, when a name was mentioned, what happened?

Mr. WEINBERG. I got a name over the phone. I would then notify Tony or John Good and give them the name.

Mr. NEAL. And give them the name?

Mr. WEINBERG. Right.

Mr. NEAL. All right. What would they say?

Mr. WEINBERG. They would get back. They told me just stall.

Mr. NEAL. They'd tell you to stall?

Mr. WEINBERG. Right.

Mr. NEAL. What would you do then?

Mr. WEINBERG. I wouldn't push it. He'd call up when they are going to do it. And I would say: "Well, I'm waiting for the answer or waiting to get the money out. We got a problem getting the cash," until we got the go-ahead.

Mr. NEAL. When you got a go-ahead, who did you get the go-ahead from?

[143] Mr. WEINBERG. John Good, or Tony would call me and say, "Go ahead and set the meeting up."

Mr. **Neal**. Set the meeting up?

Mr. **Weinberg**. Right.

Mr. **Neal**. What, if anything, would you say to Errichetti or Criden or Silvestri or these others who were bringing you names, you understand—and you were going back and saying, "Set up the meeting," right?

Mr. **Weinberg**. Well, if you want to take it, you got to take it in order. When the mayor gave me—first, he gave me quite a few other names before he gave me Myers, all right? And nothing ever happened.

Mr. **Neal**. Did you report all those names to the FBI?

Mr. **Weinberg**. Yes. The tapes went to them, they listened to them and they made the decision. It wasn't up to me and it wasn't up to Tony, as far as I know.

Mr. **Neal**. Did anybody ever tell you, "We won't go after him?"

Mr. **Weinberg**. No, they didn't. If they didn't give me an answer back, I didn't question it. Then, if they got a name like Myers, I'd write "Myers" and set the meeting up.

Mr. **Neal**. Were there names that you gave them that they never came back and said to you anything about them?

Mr. **Weinberg**. No. If you go through the tapes—now I'm trying to remember—you'll find a difference, a long wait, right **[144]** after Lederer until Thompson came in. And there were names and Criden was pushing me and I couldn't give him an answer because I didn't have an answer.

Mr. **Neal**. Did you ever get an answer on those people?

Mr. **Weinberg**. On the ones that we didn't bother with?

Mr. **Neal**. Right.

Mr. **Weinberg**. No.

Mr. **Neal**. In other words, you'd give them a name. There were occasions when you'd give the FBI a name and you would hear nothing further from the FBI?

Mr. **Weinberg**. That is correct.

Mr. **Neal**. Do you know what happened?

Mr. **Weinberg**. No. I haven't the slightest idea.

Mr. **Neal**. Can you remember some of those names?

Mr. **Weinberg**. Well, I thought—we did the first one. I think it was [deleted]; I may be wrong. And then there was a fellow named [deleted]. Then we decided to go ahead with [deleted] and it was called off, and I don't remember if we were told to go ahead with [deleted].

And then I believe—I may be getting out of context, so I don't want you to, you know, hold me to the exact names. Then there was [deleted], but I think [deleted] came later. Then there were some other names thrown in. There was a guy who was supposed to be from [deleted], and then Myers' name came in and they got the name and I got an OK to set it up.

[145] They told me where it was going to be set up and the approximate date. I would call the mayor back and set the date up.

Mr. **Neal**. Now, when you would be talking, let's say, to the mayor—and I want to make this more general, but if you need to be accurate to break it down, let me know—when you would talk to the mayor or to Criden, what would you do to make sure that a man would come in? Did you try to make sure?

You have denied categorically that you'd tell them it's all B.S., they don't have to do anything. You've denied that. What did you tell them?

Mr. WEINBERG. We never knew if they were going to show up or not. The first one—let's take Myers, all right? We never had any idea if Myers was going to show up or not. We didn't have an idea until Myers showed up.

Mr. NEAL. Wait a minute, wait a minute. As I understand what happened, a middleman would mention a name.

Mr. WEINBERG. Right.

Mr. NEAL. You would report that to the FBI, at least——

Mr. WEINBERG. Right. They would pick the tape up immediately.

Mr. NEAL. And at least on many occasions, the FBI would say, "Go ahead and set up a meeting," right?

Mr. WEINBERG. Not immediately; there would be some time in between.

[146] Mr. NEAL. Forget the time.

Mr. WEINBERG. All right.

Mr. NEAL. "Set up a meeting," they would tell you.

Mr. WEINBERG. Right.

Mr. NEAL. What would you tell your contact?

Mr. WEINBERG. When they told me to go ahead?

Mr. NEAL. Yes.

Mr. WEINBERG. I would tell them, according to the ground rules, that the Congressman would tell us what he's going to do and the Congressman would pick the money up. That's the only way that they would do it; they wouldn't do it no other way.

I'd set the place up. Let's say we picked the Hilton Inn or the International Hotel. The date would be set. I would get back to John and say, "The date is set at such and such a time," and that was agreed upon.

Mr. NEAL. What did you do, Mr. Weinberg, to determine whether a middleman was telling you the truth or not?

Mr. WEINBERG. Well, if a man didn't show up, he wasn't telling the truth. That wasn't up to me; it was to the FBI. I can only relate what the man told me.

Mr. NEAL. I understand that, but——

Mr. WEINBERG. There's no way in the world if I knew the guy was going to show up.

Mr. NEAL. What did you do, if anything, to determine [147] whether the middleman was telling you the truth or not, whether he was bringing in an honest man, a dishonest man, a man inclined to engage in this activity or not engage in it? What did you do?

Mr. WEINBERG. Nothing.

Mr. NEAL. Nothing, all right. Did you inquire as to whether this middleman had any experience with these people, whether he had corrupt transactions with them in the past, or anything like that?

Mr. WEINBERG. When you're working like this here, you go by the guy's track record, all right? The mayor was pretty reliable. Criden was reliable. Silvestri was a bullshit eyes. I mean, you didn't know—Silvestri was come and go; you really didn't know. This is my opinion, all right? And those were the only three guys that we met with.

We never knew that Criden met Thompson through Silvestri. We didn't know that. In fact, we didn't find that out until much later. Silvestri made a remark that he had $3,500 or $3,000 from the deal. I never knew it.

Mr. **Neal**. I understand.

Mr. **Weinberg**. So, we actually—you have to go by the guy's track record. Now, you got to remember, the mayor delivered to us already; his track record was good. And the mayor is the colorful guy, so when he told you Myers is a thief, Myers is this and Myers is that, you figure the guy knows what he's [148] saying.

Mr. **Neal**. I'd be——

Mr. **Weinberg**. Let me just go further. We did run into a problem with Lederer. Now, when he brought Lederer in, Lederer is calling the mayor Mario and we picked up on that. And then we figured maybe—because Italians sometimes have nicknames, maybe his nickname was Mario, because Lederer told us how well he knew the mayor. But he didn't call him Angelo; he was calling him Mario, so we didn't know for sure.

Mr. **Neal**. I understand and I guess I've gotten your answer. In order to determine whether the middleman was lying to you or not, you simply looked at what happened in the past. You didn't make any effort to interrogate the middleman?

Mr. **Weinberg**. Oh, you make—interrogate him, no. You would speak to him, and the FBI apparently was checking; I don't know.

Mr. **Neal**. What were you doing? We know what the FBI was doing, but what we're asking here is what you were doing.

Mr. **Weinberg**. I couldn't do a damned thing. I was just a small cog there. My word didn't mean anything. I gave them the tape. They went by the tape and what the guy said, and if they wanted to make the move, I did what they told me.

Mr. **Neal**. What you're saying here then is that as far as your part of this activity is concerned, you would report the name given to you by a middleman, you would wait for [149] instructions back from the FBI. And then when you said go ahead, you would simply say, "Bring the man in with the details, when and where."

Mr. **Weinberg**. If they say to go ahead, they would tell me approximately what date and where it was going to be. I would then tell the mayor, say, or Criden: such and such a date, we like, and we give a few days; such and such a hotel we'll be using, and to bring them there.

Mr. **Neal**. And that was the end of your job?

Mr. **Weinberg**. That was the end of my job. It was up to the Bureau, who checked them out as far as I know, to see, you know—now, we did get a lot of bad names, there's no doubt about it. I mean, Rosenberg gave us some bad names, but Rosenberg you don't believe too much because he was a bullshit eyes. So, you have to take a person from their track record.

Mr. **Neil**. Yes, that's one thing we've learned, Mr. Weinberg, in Abscam: You've got to take a man by his track record. What was your track record, Mr. Weinberg? You were a con man, weren't you?

Mr. **Weinberg**. My track record was a lot of convictions we got.

Mr. **Neal**. Who first proposed [deleted] name?

Mr. Weinberg. [deleted] name came up by—let me remember how he came up. The mayor was trying to sell the garbage route in Camden. He sold it to George Katz for 10 [150] grand, I think, or 20 grand he got from them.

Mr. Neal. [deleted]?

Mr. Weinberg. No, no. Mayor Errichetti sold the garbage route to George Katz for $20,000. He gave him the shaft. When George went to call him——

Mr. Neal. Now, who was the shaftor and who was the shaftee? I don't understand. Who gave whom the shaft?

Mr. Weinberg. The major gave it to Katz, because after he gave him the $20,000 and he called up to find out about seeing the contract, he wouldn't return his call and Katz got mad. And Katz called me up and said he was going to put a contract out on him.

Mr. Neal. On Mayor Errichetti?

Mr. Weinberg. Right. I misunderstood it and I thought he was going to do it immediately and I notified Tony. We called a meeting to meet with Katz and he said, "no, no." He said, "I went to the boys and I told them what the mayor did to me. So, when the time comes that I want to collect my money, they don't say 'why didn't you tell me before when it happened? Why are you telling me now.' " So, he went on record that the major beat him out of 20 grand.

So, then, to make amends there, [deleted] name came in because Katz wanted [deleted]. He had Newark; he wanted [deleted]. And the mayor says he can make the contact with [deleted].

Mr. Neal. What mayor, Mayor Errichetti?

[151] Mr. Weinberg. Mayor Errichetti.

Mr. Neal. Who brought up [deleted] name first?

Mr. Weinberg. I believe the mayor brought it up first. I do not know how he actually——

Mr. Neal. Mayor Errichetti?

Mr. Weinberg. I believe so.

Mr. Neal. All right. A Lieutenant Governor [deleted] name was [deleted] and his name was brought up.

Mr. Weinberg. That was brought up—Lieutenant Governor [deleted] from [deleted] was brought in by Silvestri.

Mr. Neal. Silvestri brought his name up?

Mr. Weinberg. Yes.

Mr. Neal. Mr. Weinberg, did you ever set up a meeting, or were you ever asked to set up a meeting with any public official whose name was brought up by someone other than the middleman?

Mr. Weinberg. Now, when you say a public official, are you talking about Congressmen?

Mr. Neal. Well, let's start out with Congressmen and Senators.

Mr. Weinberg. Not that I know of.

Mr. Neal. Not that you know of?

Mr. Weinberg. That I can remember right now. I didn't know any politicians. Most of them—all the politicans came from middlemen.

[152] Mr. Neal. Did Mr. Amoroso or Mr. Good or anyone suggest the name of a Congressman or Senator to you?

Mr. Weinberg. Hughes didn't come from them. Hughes came from Criden, I believe—Criden or Silvestri. Silvestri had something to do with it and we were supposed to meet him. Now, I may get the two names wrong.

Mr. NEAL. I know, but that's not my question. Maybe you misunderstood. Did Mr. Amoroso or Mr. Good or anybody else with the FBI suggest the name of a Congressman or Senator to you in the first instance?

Mr. WEINBERG. No, they never gave me no names. Every name came from a middleman.

Mr. NEAL. How long had you knew Mr. Alex Feinberg?

Mr. WEINBERG. I met Alex Feinberg when we were in Atlantic City, and the first time we met the mayor, he told us to come to Cherry Hill to meet Senator Williams' bag man.

Mr. NEAL. And that was in Abscam?

Mr. WEINBERG. Yes.

Mr. NEAL. So, the first time you ever met Alex Feinberg was in Abscam?

Mr. WEINBERG. That's correct.

Mr. NEAL. You had never known him before?

Mr. WEINBERG. I never knew him before.

Mr. NEAL. Did you ever tell Mr. Tom Puccio that you had known Feinberg for many years?

[153] Mr. WEINBERG. That's not true.

Mr. NEAL. Pardon me?

Mr. WEINBERG. That's not true. I don't know where that came from.

Mr. NEAL. Let me read you a memorandum from Thomas Puccio to Curt Muhlenberg, Chief, Organized Crime and Racketeering Section, dated March 26, 1979, and it is as follows:

> An official inquiry has also commenced involving U.S. Senator Harrison Williams of New Jersey. As a part of the undercover Atlantic City investigation, the agents and the informant have been introduced to Mr. Alex Feinberg, a Cherry Hill attorney, who, according to Mayor Errichetti, is a bagman for Senator Williams. The mayor has also stated that Williams is corrupt. Feinberg has known the informant for many years.

That is not true?

Mr. WEINBERG. No, that's not true.

Mr. NEAL. Did you ever tell Mr. Tom Puccio that?

Mr. WEINBERG. No, I didn't because if you listen to the tapes, you——

Mr. NEAL. No, no. That answers my question.

Mr. WEINBERG. I'm saying it proves I only met him. He introduced himself. I never knew him before.

Mr. NEAL. OK. My question is, whatever may be on the tape, the first time you ever met Alex Feinberg was in 1979?

[154] Mr. WEINBERG. Yes. It was in Cherry Hill. I forgot the month. I met Feinberg and Sandy Williams at the same time.

Mr. NEAL. In 1979?

Mr. WEINBERG. Right.

Mr. NEAL. And it goes on to say, and I'm quoting,

> The informant believes that Feinberg would not have turned to him to seek investors in the mine if this were a legitimate business venture, since the informant, as Mr. Feinberg well knows, is a notorious confidence man.

You never told Mr. Puccio that you had any relationship with Mr. Feinberg?

Mr. **Weinberg**. I never knew Mr. Feinberg until the day I met him, and I never told Mr. Puccio that.

Mr. **Neal**. And you never told Mr. Puccio that you had known Feinberg or Feinberg had known you for many years?

Mr. **Weinberg**. The first time I met Feinberg was in Cherry Hill there. The mayor brought him in to us to meet him. That was the first time we met him. We met Sandy with him, and I didn't know anything about the mine. In fact, it took me about 2 months to understand the damned mine with the titanium.

Mr. **Neal**. You understand that according to this memorandum, this is being used, at least in part, as a basis for continuing the investigation of Senator Williams—the fact that you knew Feinberg, Feinberg knew you and you believe—it [155] says,

> The informant believes that Feinberg would not have turned to him to seek investors in the mine if this were a legitimate business venture, since the informant, as Feinberg well knows, is a notorious confidence man.

Mr. **Weinberg**. Mr. Neal, I never said that. I don't know anything about it. I wouldn't know anything about personal records going out and I never said that.

Mr. **Neal**. And, to your knowledge, Feinberg would not have known you for many years?

Mr. **Weinberg**. Feinberg didn't know me from a hole in the wall.

Mr. **Neal**. OK. Do you know how Mr. Puccio would come to make that representation to his superior on March 26, 1979?

Mr. **Weinberg**. I would ask Mr. Puccio. I wouldn't have the—I only met Mr. Puccio that one time I told you we went down and maybe two or three times during the operation.

Mr. **Neal**. Mr. Weinberg, when you first became an informant for the FBI, were you given any instructions or training or advice?

Mr. **Weinberg**. Are you talking about in 1965?

Mr. **Neal**. Well, I have to take it back there. Were you given any in 1965, and let's take the period 1965 through 1976?

Mr. **Weinberg**. Yes, watch myself and stay alive.

Mr. **Neal**. That was your advice?

Mr. **Weinberg**. Yes.

[156] Mr. **Neal**. Were you told to report whatever you found? I assume that's what an informant does.

Mr. **Weinberg**. Well, I wasn't working full time for the FBI.

Mr. **Neal**. You were working part time on scams for yourself.

Mr. **Weinberg**. I was in business for myself at the time doing scams, all right? All I was doing was any securities that came in, I was giving to——

Mr. **Neal**. Other than that——

Senator **Mathias**. What was that advice you were given, to watch yourself and stay alive?

Mr. **Weinberg**. That is correct. At that time in 1965, we were dealing with pretty heavy organized crime people.

Senator **Mathias**. It sounds like the advice they give new recruits in the Navy.

Mr. **Neal**. Marine Corps at Parris Island.

Senator **Mathias**. Navy. Keep your eyes open and your mouth shut and salute your captain.

Mr. **Neal**. Mr. Weinberg, while I'm on this and while it comes to my attention, did you ever give Amoroso an automobile?

Mr. **Weinberg**. I didn't give him an automobile. I had a Camaro. What the hell was it? A Z-28 Camaro and, first of all, you couldn't get gas; there was a gas shortage. And I was going to get rid of it and I says, "Do you want it?" He says, **[157]** "Yea," he says, "We'll take over the payments."

Mr. **Neal**. What year was the Camaro?

Mr. **Weinberg**. Either a 1979 or a 1978.

Mr. **Neal**. A pretty new car?

Mr. **Weinberg**. Yes. I only had it maybe not too long; I don't think I had it that long. But I couldn't get gas to run it.

Mr. **Neal**. Did he take over the—did he take the car? Did you title it to him then?

Mr. **Weinberg**. I went down with him to General Motors and signed it over to him.

Mr. **Neal**. How much did you owe at that period of time?

Mr. **Weinberg**. Oh, I don't know; about $7,000, $7,500 maybe.

Mr. **Neal**. All right. Now, moving on, that's the only instructions you got from 1965 to 1977. When you started back again, and now we're talking about Abscam, what instructions or training did you get at that time?

Mr. **Weinberg**. Training? I didn't get any training. I don't think I needed training. Instructions: Just report everything to them. You got to remember I was a hit man in the beginning.

Mr. **Neal**. What do you mean, you were a hit man?

Mr. **Weinberg**. Well, I worked with an organized crime guy. They wanted to hire a hit man and I was J.P., the hit man. **[158]** [deleted]. I went out to meet these guys in a boiler factory to tell them what J.P. was going to do on the hit and they told me there was a leak. [deleted].

Mr. **Neal**. Other than that, did you ever get any other training from the FBI?

Mr. **Weinberg**. I don't think I needed training.

Mr. **Neal**. Well, whether you needed it or not, did you get it?

Mr. **Weinberg**. No.

Mr. **Neal**. Were you ever given any training during the course of Abscam on the law of entrapment and that sort of thing?

Mr. **Weinberg**. No, because they were supervising it. Anything I did, they gave the OK.

Mr. **Neal**. When you were involved in Abscam, when did you first start taping conversations?

Mr. **Weinberg**. I started taping back in 1978, all right, and this was on my own recorder. Like I said, the problem was tapes. We didn't get any official tape recorders until, I would say, March 1979. We were using what we had.

Mr. **Neal**. You mean you were not given—when you started out, and let's talk about now after Abscam is approved, which **[159]** is July 1978, OK. Talking about that period following that——

Mr. **Weinberg**. We had no tape recorders.

Mr. **Neal**. You were not given a tape recorder?

Mr. **Weinberg**. No, I was never given a tape recorder. I had to go get my own, finally.

Mr. **Neal**. You used your own throughout Abscam?

Mr. WEINBERG. Yes. In fact, I even lost it. They got it as evidence; I can't get it back.

Mr. NEAL. What were the instructions you were given about taping, what to tape, when to tape, and so forth?

Mr. WEINBERG. To tape wherever it was possible.

Mr. NEAL. Tape wherever it was possible?

Mr. WEINBERG. Right.

Mr. NEAL. All right. But they supplied you no tapes?

Mr. WEINBERG. Tapes were like trying to get money out of the FBI. It was nearly impossible.

Mr. NEAL. How would you tape the conversations? For example, on September 13 there's a tape; on October 6 there's a tape. What were you taping that on then?

Mr. WEINBERG. Well, let me go back so you can understand. In the beginning, we had 15, 20 messages on one tape. When Tony came into the picture, he says one on a tape. Now, they would give you a box of tapes, say. You pick a box of tapes up when you go on the road. Well, a box—I believe there was [160] 24 tapes.

You may use 10 or 12 tapes up on the road and then when you get to Florida, you were out of tapes after a day of two. So, you would have to go down to the RA and try and get more tapes from them. They didn't have tapes.

Mr. NEAL. Well, I'm trying to take it one by one now.

Senator HUDDLESTON. Can I ask just a technical question?

Mr. NEAL. Yes.

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

[161] Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. WEINBERG. [deleted.]

Senator HUDDLESTON. [deleted.]

Mr. NEAL. Let's go back again and take this one by one now. In July, August, September, October, and November 1978, were you taping any conversations outside of the Abdul headquarters? Now, we know some were taped at Abdul headquarters. That would be something that you would not be doing. Somebody else would be doing that, right?

Mr. WEINBERG. No. We didn't have a setup in Abdul at [162] the time. Let me try and figure the setup they had. The telephone—in order to tape a telephone call in Abdul headquarters, you had to take a tape recorder and stick it on the machine, like we did.

The only recorder was in McCarthy's office and it was locked up sometimes, and we had a problem with tapes. So, sometimes I would bring mine in that I had to tape something, but most of the time we didn't tape too many calls unless Jack taped them in the beginning.

Mr. NEAL. How about any person-to-person meetings at Abdul headquarters in 1978?

Mr. WEINBERG. That was wired to the FBI headquarters. When they put the machine on, I think they pressed the button because they screwed up a couple of times and cut it off. [deleted.]

Mr. NEAL. OK. So, the room was wired wherever you were meeting and the sound was transmitted to FBI headquarters?

Mr. WEINBERG. I don't want to—I don't know if every room was wired; certain rooms were.

Mr. NEAL. But you had nothing to do with that recording of person-to-person meetings in Abdul headquarters—that's what I'm getting to—right?

Mr. WEINBERG. No.

Mr. NEAL. All right. Now, you also during 1978 would, you say, record certain telephone calls when you were at Abdul [163] headquarters, and you've told us about that.

Mr. WEINBERG. If we were able to, we recorded. When something important come in there that we had to record at the time, we recorded it.

Mr. NEAL. All right. Now, how about recording of conversations, telephonic or in person, outside of Abdul headquarters in 1978?

Mr. WEINBERG. In 1978, all right. If we had tapes, all right—if I had tapes and I got a call at my house there, if I was living there at the time, staying there, I would record it if we had a tape. There are tapes there. Like I say, there are 15, 20 calls on some of them. They would call and then we would just leave it on and take the next one, too.

Mr. NEAL. And your instructions at that time were to record whatever you could?

Mr. WEINBERG. Try to record every call as possible; what was important, as they would say.

Mr. NEAL. But it was left to you to decide what was important?

Mr. WEINBERG. Well, what I was doing at the time, if we had it, I would let the damned thing run, you know, and let them decide.

Mr. NEAL. I don't understand that, I guess.

Mr. WEINBERG. If I could tape, all right, and I had a tape there, I would let the damned recorder run and tape it [164] down, and let them decide what was important and what was not.

Mr. NEAL. Well, you'd have to turn it on, though, for a telephone call.

Mr. WEINBERG. I had it hooked up to the phone in the house.

Mr. NEAL. And everytime you'd pick up the phone, it would go on?

Mr. WEINBERG. No. I would turn it on.

Mr. NEAL. All right. But it was left to you to determine—were you taping every one, you're saying, then?

Mr. **Weinberg**. Whenever I could tape, I would tape.

Mr. **Neal**. My question is, was it left to you to determine whether to tape or not tape, what was important or what wasn't? They told you, "Tape what's important," and it was your judgment as to what was important?

Mr. **Weinberg**. Well, they told me to tape what was important, and if I had a tape, I would tape it, all right?

Mr. **Neal**. All right.

Mr. **Weinberg**. If I didn't have a tape, I couldn't tape it.

Mr. **Neal**. Were they providing you any tapes in 1978?

Mr. **Weinberg**. Some.

Mr. **Neal**. How would you get them? I mean, would they sign them out to you? Would they serialize them in some way and sign them out to you, or would you just go in and grab a [165] bunch of tapes, whatever you could get?

Mr. **Weinberg**. You don't grab nothing from the FBI. They would give you six tapes, a dozen tapes, whatever they had.

Mr. **Neal**. Did they number them serially or anything?

Mr. **Weinberg**. No.

Mr. **Neal**. Were you supposed to return every tape?

Mr. **Weinberg**. What was I going to do with them?

Mr. **Neal**. Well, I don't know what you were going to do. Were you supposed to return them?

Mr. **Weinberg**. Whatever tapes were done I would give back to them.

Mr. **Neal**. Now, then, did the procedure change at anytime?

Mr. **Weinberg**. Did the procedure change in what way?

Mr. **Neal**. Strike that. Let me ask you another question.

When did you give them back? Did they tell you when to give them back?

Mr. **Weinberg**. No. In the beginning, I would take them up to the office everyday and just drop them off there.

Mr. **Neal**. Were you told to do that, or was that left to you?

Mr. **Weinberg**. I really don't know if I was told or not. I just brought them up and left them there; I gave them to Jack.

Mr. **Neal**. Would you leave them around on occasions for [166] several days?

Mr. **Weinberg**. Not when we were in the beginning.

Mr. **Neal**. Not in the beginning?

Mr. **Weinberg**. Down in Florida, they would be there for maybe—sometimes for several days.

Mr. **Neal**. All right. Now, then, did this procedure ever change with respect to the taping? I'll move on now into 1979. You take me through it. Did the procedure ever change?

Mr. **Weinberg**. The procedure changed when Tony came in. He said he wants every tape marked and one conversation on a tape.

Mr. **Neal**. Were these 30-minute tapes, generally, or that sort of thing?

Mr. **Weinberg**. Some were 30, some were 60. We even got a batch that were no good and everytime you put it in, it start beeping.

Mr. **Neal**. And his instruction was to put one conversation on a tape. If it's 5 minutes on a 60-minute tape, you'd have 55 minutes blank?

Mr. **Weinberg**. That's correct.

Mr. **Neal**. Did you do that?

Mr. **Weinberg**. When I could, yes.

Mr. **Neal**. Did there come a time when the FBI then started regularly providing all of your tapes?

Mr. **Weinberg**. They would provide them all the time as it [167] was then if they had them. We were always short tapes throughout the whole thing.

Mr. **Neal**. All right.

Mr. **Weinberg**. You got to remember we were on the road sometimes 2, 3 weeks.

Mr. **Neal**. All right. Now, let me go back into 1978 again. Did you ever record any person-to-person conversations that were not at Abdul headquarters in 1978?

Mr. **Weinberg**. I did record—now, when you say person-to-person——

Mr. **Neal**. Right.

Mr. **Weinberg**. I don't know if it was 1977 or 1978. I recorded a conversation with an organized crime guy with a [deleted].

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

[168] Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

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Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

[169] Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

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Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

[170] Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. [deleted.]

Mr. **Weinberg**. [deleted.]

Mr. **Neal**. All right. How long would it be before you would turn over a tape?

Mr. **Weinberg**. Well, it was according to where I was. If I was on the road, they'd get them immediately. If I was down in my trailer in Florida, it could be sometimes 1 week, 4 days, 5 days. If they were really important, they would send an agent right up to get them.

Mr. **Neal**. Did you log the tapes as you made them, or how did you handle the tapes?

Mr. **Weinberg**. I just turned them over. I was not an FBI agent. I didn't do logging.

Mr. **Neal**. You didn't make any logs of it?

Mr. **Weinberg**. I didn't make any logs.

Mr. **Neal**. Did you write anything on the tapes?

Mr. **Weinberg**. Some tapes I may—phone conversation tapes, [171] I wrote on. But you say person-to-person tapes?

Mr. **Neal**. Yes.

Mr. **Weinberg**. No. The agent did that.

Mr. **Neal**. Well, you only had 10 or 12 of those?

Mr. **Weinberg**. Right.

Mr. **Neal**. All right. On the telephone conversation tapes, did you write on them?

Mr. **Weinberg**. I'd write the date, the time, and who called who.

Mr. **Neal**. You would write that?

Mr. **Weinberg**. Right.

Mr. **Neal**. On the cover of the cartridge or wherever it is?

Mr. **Weinberg**. Well, most of the time on the tape itself, I scribble it in.

Mr. **Neal**. There was no set time, then, as to when you'd turn these over or when somebody would pick them up, as I gather from what you're saying.

Mr. **Weinberg**. Well, no. If it was an important tape and I spoke to John, and let's say that we got a name, they would pick it right up. If it was just ordinary garbage that we got, it would stay until either I come back up or I see them a few days later.

Mr. **Neal**. When you would have an unrecorded conversation, and you had several with Mr. Errichetti—will you acknowledge [172] that?

Mr. **Weinberg**. I maybe did, yes.

Mr. **Neal**. Did you tell the FBI when you had one of these unrecorded conversations with Mr. Errichetti?

Mr. **Weinberg**. I would tell them I spoke to him, yes.

Mr. **Neal**. Would you tell them what the conversation was?

Mr. **Weinberg**. If they asked me, I would tell them.

Mr. **Neal**. If they asked you, you'd tell them. Did you call them up immediately and tell them, or would you just do that in passing when you saw somebody?

Mr. **Weinberg**. If it was anything important, I would call them up immediately and tell them.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. If it was important. Just an ordinary conversation, no.

Mr. **Neal**. If you considered it important?

Mr. WEINBERG. If I considered it important.

Mr. NEAL. You'd call them up and tell them about it?

Mr. WEINBERG. Yes.

Mr. NEAL. Did you consider the January 19, 1979 one important?

Mr. WEINBERG. What was that? I don't remember.

Mr. NEAL. The night before the pay-off to Mr. Errichetti.

Mr. WEINBERG. When he called me?

Mr. NEAL. When you met.

[173] Mr. WEINBERG. Are you talking about the Holiday Inn?

Mr. NEAL. Yes, sir.

Mr. WEINBERG. I told McCarthy he was at the Holiday Inn and I seen him there. I went over; he called.

Mr. NEAL. Did you tell the FBI you'd met on the evening of January 19 with Mr. Errichetti?

Mr. WEINBERG. You're talking about when he went to the Holiday Inn?

Mr. NEAL. I can't hear you.

Mr. WEINBERG. You're talking about when he went to the Holiday Inn?

Mr. NEAL. I'm talking about the evening before the payoff to Mr. Errichetti on January 20.

Mr. WEINBERG. That's when he came out to the Holiday Inn.

Mr. NEAL. Well, wherever it was, did you tell the FBI you had met with him that night?

Mr. WEINBERG. When I went up to the office that morning, I told Jack that he was over at the Holiday Inn, because they were watching.

Mr. NEAL. Did you tell him that you'd met and had a conversation with him?

Mr. WEINBERG. I told him I met him there. He wanted to know if the money—first of all, Jack wanted to make sure he was going to be there. I says, "Yes, he's at the Holiday Inn."

Mr. NEAL. Let me get this clear now. You're saying you [174] told the FBI on the 20th that you had a conversation with Mr. Errichetti that night before?

Mr. WEINBERG. I told Jack McCarthy that.

Mr. NEAL. You told Jack McCarthy that?

Mr. WEINBERG. Right.

Mr. NEAL. Mr. Weinberg, did you ever lose any tapes?

Mr. WEINBERG. Yes. Well, I didn't lose them. They were stolen out of my bag.

Mr. NEAL. How many?

Mr. WEINBERG. Three tapes.

Mr. NEAL. Three tapes? When was that?

Mr. WEINBERG. I believe it was in January 1980.

Mr. NEAL. All right. Did you have anything else—taken out of your bag—where?

Mr. WEINBERG. I don't know where it was taken out. It was either taken out in Florida or New York.

Mr. NEAL. Let's put it this way: It was in your bag when, and it wasn't in your bag when?

Mr. WEINBERG. When I got my grips at the airport—when I got to the hotel, I opened it up to get my cigars and they were gone.

Mr. NEAL. Were your cigars gone, too?

Mr. **Weinberg**. Yes.

Mr. **Neal**. Which hurt you the most?

Mr. **Weinberg**. The cigars. I wasn't worried about the [175] tapes.

Mr. **Neal**. I understand that.

How many tapes were missing?

Mr. **Weinberg**. Three tapes.

Mr. **Neal**. Three tapes?

Mr. **Weinberg**. Right.

Mr. **Neal**. Did you have anything else in the bag other than tapes and cigars?

Mr. **Weinberg**. No.

Mr. **Neal**. You testified at one time that you had a recorder in your bag.

Mr. **Weinberg**. No, that's a misunderstanding. The judge misunderstood or I misunderstood him. The recorder I had was put in as evidence. I don't know how I could tell him I lost my recorder.

Mr. **Neal**. Pardon me?

Mr. **Weinberg**. He asked me where my recorder was, all right, at the time. I said in the bag and somewhere along the way it got lost. He said I said the recorder was taken. The recorder wasn't taken. The recorder was in the other part of the bag.

Mr. **Neal**. You're saying that they took the tapes but didn't take the recorder?

Mr. **Weinberg**. The recorder wasn't with the—you know the outside bag that you have?

[176] Mr. **Neal**. Different compartments. You had the tapes in one compartment and the recorder in another?

Mr. **Weinberg**. The recorder was in my briefcase. The tapes and the cigars were in the outside of my carry-on bag, which I checked.

Mr. **Neal**. Different bags, you're saying?

Mr. **Weinberg**. Yes.

Mr. **Neal**. Is that what you're saying?

Mr. **Weinberg**. Right.

Mr. **Neal**. So, you're saying that the recorder was not in the same bag with the tapes?

Mr. **Weinberg**. Right.

Mr. **Neal**. This is an error, then. You made a mistake on this in the *Jenrette* trial?

Mr. **Weinberg**. The judge—I don't know where he got the idea I said it, unless I misunderstood him. He said the recorder was taken. The recorder was put in evidence in the *Myers* trial; they had it there.

Mr. **Neal**. You said that these were removed from your luggage. Answer: "Removed from my carry-on bag. I checked. I have two big pockets on the side. The recorder was in there, too, but they didn't take the recorder." You misspoke yourself if somebody would infer from that that the recorder was in the same bag. Is that what you're saying?

Mr. **Weinberg**. It wasn't the same bag.

[177] Mr. **Neal**. What was on the tapes, do you recollect?

Mr. **Weinberg**. They were tapes—the best of my recollection was people calling up wanting to know where their money was. One was Rosenberg. I believe Criden was another one. All the cases were stopped. There was no cases going on and no pending investigation. We was just getting ready to close down.

Mr. NEAL. Mr. Amoroso, let me move on—Mr. Weinberg.

Mr. WHEELER. May I ask him some questions?

Mr. NEAL. Sure, go ahead.

Mr. WHEELER. Mr. Weinberg, in the spring of 1979, did you ever complain to the FBI about the fact that you didn't have enough tapes to record all the important conversations?

Mr. WEINBERG. I complained all the time to them that we were short of tapes.

Mr. WHEELER. What response did they give you?

Mr. WEINBERG. They gave me what they had.

Mr. WHEELER. Did they tell you why they didn't give you more tapes? Was it a question of funds?

Mr. WEINBERG. The FBI don't tell you why they do something.

Mr. WHEELER. All right. In the early part of 1979—January, February, March—would it be accurate to say that you talked to Mayor Errichetti approximately once a day or more?

Mr. WEINBERG. What date now?

[178] Mr. WHEELER. Let's say March 1979.

Mr. WEINBERG. I would say yes, approximately.

Mr. WHEELER. But you only turned in recordings of about 10 to 12 days during that 30-day period?

Mr. WEINBERG. Well, we could have been on the road up there at the time seeing him, because we were seeing him all the time. You got to go, like I tell you, through the log, which we did at the beginning of the trial to see where we were. It could have been that we were down in Florida and we weren't speaking to him; we were meeting with him, all right?

Then there was a time in March of 1979 when we had the boat party.

Mr. WHEELER. You say that you turned——

Mr. DIENST. Excuse me. May I, on behalf of my client, make a request for a call of personal necessity? Senator, may we just have a short recess?

Senator MATHIAS. Yes.

Mr. DIENST. Thank you very much.

Senator MATHIAS. The committee will stand in recess for 5 minutes.

Mr. DIENST. Thank you very much.

[Whereupon, a brief recess was taken.]

Senator MATHIAS. The committee will come to order.

Senator RUDMAN. Mr. Weinberg, I want to go over a few other details about your relationships with the FBI. When you [179] were retained by the FBI for this particular assignment which came to be known as Abscam but started as something else, what were your financial arrangements with them?

Mr. WEINBERG. I was receiving—well, actually, the first—say, 1978, in the beginning, I was getting nothing. I was supposed to recover art pictures to make some big bucks. And then in 1978 when they got financed, I was getting $1,000 a month—no expenses or anything.

Senator RUDMAN. A $1,000 a month during 1978?

Mr. **WEINBERG**. 1978, right, until I believe it was March of 1979 or May of 1979, something like that.

Senator **RUDMAN**. What did you receive then?

Mr. **WEINBERG**. Then I received $3,000 a month.

Senator **RUDMAN**. And at what point did that stop, or has it stopped?

Mr. **WEINBERG**. No. Unfortunately, it stopped.

Senator **RUDMAN**. When?

Mr. **WEINBERG**. It stopped—well, then they cut me down in 1980 to 1981. I believe in November of 1981, they cut me to $2,000 a month; I was testifying. And then January, February, March—April of this year—March or April of this year, they called me up and said no more money.

Senator **RUDMAN**. And when did this start, in 1978 or in 1977?

Senator **MATHIAS**. March of 1982?

[180] Mr. **WEINBERG**. Yes, Senator, it was this year they called me up and said no more money; that was it.

Senator **RUDMAN**. When did the payments start, in 1977 or in 1978?

Mr. **WEINBERG**. 1978, the payments started.

Senator **RUDMAN**. So, you were paid in 1978 at the rate of $1,000 a month, and then it was up to——

Mr. **WEINBERG**. Up to, I believe, March or April of 1979; then I got $3,000 a month.

Senator **RUDMAN**. Until you were terminated?

Mr. **WEINBERG**. Until I was—well, no. They broke me down to $2,000 a month.

Senator **RUDMAN**. And then you were terminated?

Mr. **WEINBERG**. Right.

Senator **RUDMAN**. Now, during that same period of time, you also received some bonuses, is that correct?

Mr. **WEINBERG**. That is correct.

Senator **RUDMAN**. Could you outline the bonuses for us?

Mr. **WEINBERG**. I wouldn't have the slightest idea, Senator. That's a long time ago. Anybody gives you money, you just take it and ask no questions. They would give me money. I never asked them what it was for; I just took it.

Senator **RUDMAN**. Well, I'm sure that you couldn't give me an accounting, and I'm not asking for that. We can get the records on that, but——

[181] Mr. **WEINBERG**. There is a slip out with everything down, but part of that is my expenses. See, I laid out my own expenses there, going back and forth from Florida. If I went out to, say, Jersey with another agent and we stayed in a hotel, I used to pay the expenses.

Senator **RUDMAN**. Well, when they would give you these bonuses, Mr. Weinberg, were you getting, like, $500, or $1,000 or $5,000, or what were they?

Mr. **WEINBERG**. Well, I received $10,000 the first one, all right?

Senator **RUDMAN**. Just tell us about the ones you remember.

Mr. **WEINBERG**. Well, it's hard. I remember the $10,000. I remember $15,000. When the thing went down——

Senator **RUDMAN**. What was the second one? I didn't hear the second one.

Mr. **Weinberg**. Fifteen, I believe it was.

Senator **Rudman**. Fifteen. So, you remember a $10,000 and a $15,000.

Mr. **Weinberg**. Then, when the thing went down in February, they gave me another $10,000.

Senator **Rudman**. So, that was $35,000 in bonuses that you recall?

Mr. **Weinberg**. Senator, I relocated myself twice.

Senator **Rudman**. Mr. Weinberg, I'm not asking for [182] justification of whether you deserved it or they should have given it to you. I'm just trying to get some numbers; that's all I'm interested in.

Mr. **Weinberg**. The numbers are that I believe the whole total is over $200,000 paid to me.

Senator **Rudman**. All right. So, what you're saying is that your salary during 1978, 1979, 1980 and 1981 was never at the rate of more than $36,000 a year, $3,000 a month; for some time, at the rate of $2,000 a month, which is about $24,000 a year; and for some time, $12,000 a year, which is $1,000 a month. So, the average pay over that 3-year period couldn't have been more than $90 or $100,000, and you're saying you got about another $100,000 in bonuses?

Mr. **Weinberg**. No; it wasn't $100,000 in bonuses. There was a lot of expense money involved.

Senator **Rudman**. And reimbursements?

Mr. **Weinberg**. Right.

Senator **Rudman**. Expenses and reimbursements.

Who gave you this money?

Mr. **Weinberg**. The FBI.

Senator **Rudman**. And did they have you sign a voucher for it?

Mr. **Weinberg**. I signed vouchers for everything they gave me.

Senator **Rudman**. You signed vouchers for all money that [183] was given to you?

Mr. **Weinberg**. Right.

Senator **Rudman**. And I assume that you received some notification at the end of the year in some form as to how much money you had received?

Mr. **Weinberg**. No; I haven't. That's one of the problems I ran into with income tax.

Senator **Rudman**. Well, did you run into a problem? That was my next question. Did you run into a problem with your income tax?

Mr. **Weinberg**. I did run into a problem with the income tax. During the operation, I didn't file taxes because, No. 1, I wouldn't put down what I was doing. And, No. 2, I never knew what the hell I was even getting. I couldn't tell you how much I was getting a year until 1980. They gave me a slip of how much I got paid.

But I did pay all my taxes. I straightened it out with the Government.

Senator **Rudman**. So, you're now straightened out with the Internal Revenue Service?

Mr. **Weinberg**. With no favors asked. I got stuck.

Senator RUDMAN. I want to ask you about a name. I'd like to describe a person to you, or maybe just his name to start with. Does the name Myatt mean anything to you, M-y-a-t-t?

[184] Mr. WEINBERG. Meyer Lansky?

Senator RUDMAN. No; that is a last name, Myatt.

Mr. WEINBERG. No; you have to refresh my memory.

Senator RUDMAN. Stan Myatt.

Mr. WEINBERG. No; I don't know him.

Senator RUDMAN. Were any of the individuals that you dealt with at that time in the New Jersey-New York operation or any of the individuals that you dealt with, with the organized crime people that you had been dealing with, people of very large physical characteristics?

I'm talking very bulky people; I'm talking people 6 feet 2 inches to 6 feet 5 inches, maybe weighing between 220 and 300 pounds.

Mr. WEINBERG. The only person I dealt with that size was Big George.

Senator RUDMAN. Who's Big George?

Mr. WEINBERG. Big George was a gun runner, narcotics guy.

Senator RUDMAN. What's his real name?

Mr. WEINBERG. Big George Cannon. He was like 400-and-some-odd pounds. The only way you could get cuffs on him or lock him up was drop a hand grenade in his pants.

Senator RUDMAN. Where did he live?

Mr. WEINBERG. He came out of Florida.

Senator RUDMAN. He came from Florida. Tell us about your associations with him, would you please?

Mr. WEINBERG. Well, Big George was a gun runner. The [185] first time we met him, a guy set us up to be ripped off. We were going——

Senator RUDMAN. What year was that?

Mr. WEINBERG. 1978, I believe, or 1979; the end of 1978, it may have been.

Senator RUDMAN. Where were these transactions taking place?

Mr. WEINBERG. Florida.

Senator RUDMAN. In Florida?

Mr. WEINBERG. Right.

Senator RUDMAN. Now, did you see him up in New York at all?

Mr. WEINBERG. No; in fact, we didn't like to see Big George too much.

Senator RUDMAN. Are you aware of any of his trips north?

Mr. WEINBERG. Not that I know of.

Senator RUDMAN. Of your personal knowledge, did you ever see him in Atlantic City?

Mr. WEINBERG. No; if I seen Big George in Atlantic City, I'd go the other way.

Senator RUDMAN. Did you ever discuss some of your other affairs with him—some of the things that you were doing?

Mr. WEINBERG. With Big George?

Senator RUDMAN. Yes.

Mr. WEINBERG. No; he wanted to borrow the yacht for [186] narcotics, you know, to bring a load in. He was into all types of narcotics deals and gun running. Like I said, the first time we met him, he was going to put a hit on us. We brought the money to buy guns and he was going to knock us off and take the money.

Senator RUDMAN. Was he also in the money-lending business?

Mr. WEINBERG. The shylock business?

Senator RUDMAN. Yes.

Mr. WEINBERG. He may have been.

Senator RUDMAN. Did he have any associates that you knew? Did you know his friends?

Mr. WEINBERG. Yes.

Senator RUDMAN. Could you name them for us?

Mr. WEINBERG. I'm trying to think of the name. I think New York Al was one guy.

Senator RUDMAN. Could you describe him for us, please?

Mr. WEINBERG. What did New York Al look like now? He looked built like me, a little bit taller than I was. And the other guy——

Senator RUDMAN. And what was his last name?

Mr. WEINBERG. I don't know. I know him as New York Al.

Senator RUDMAN. That's all you know?

Mr. WEINBERG. Yes.

Senator RUDMAN. How about anybody else?

[187] Mr. WEINBERG. He brought us to a guy on the boat there who was supposed to be a friend of Mayor [deleted] down there.

Senator RUDMAN. And what was his name?

Mr. WEINBERG. I don't even remember his name. And then he had his go-fer that always with—bodyguard that was always with him.

Senator RUDMAN. And what did he look like?

Mr. WEINBERG. Oh, he was about 190 pounds, about 6 foot.

Senator RUDMAN. Can you describe this principal character for us again, this fellow from Florida?

Mr. WEINBERG. Big George?

Senator RUDMAN. Yes.

Mr. WEINBERG. Big George, I'd say, is about 400, 450. He looks like a wrestler; dark hair. That's about it.

Mr. NEAL. Let me follow that up just a moment.

Did Mayor Errichetti ever come to you and tell you that he'd talked to somebody and that somebody had told him that this operation was an FBI operation, that the boat was an FBI instrument?

Mr. WEINBERG. That is correct.

Mr. NEAL. Who did he say told him that?

Mr. WEINBERG. Well, the story goes—I don't know the guy's name, but the story goes this way: An agent named Fitzpatrick sent him to the party to mingle with the people.

[188] Mr. NEAL. Now, wait a minute. Say that again.

Mr. WEINBERG. An agent named Fitzpatrick, who was I guess you'd call an ASAC down in Miami, told him to come on the boat and mingle with the people.

Senator RUDMAN. Told who?

Mr. WEINBERG. This gentleman you're talking about who went to the mayor. He came on the boat and Tony just said that this guy is a friend of his, and that's all. I don't know; maybe a month, 2 months—I'll tell you when it was, July 4, 1979. I get a call from the mayor; he wants to see me—July 4 or July 3, around that time.

I says why? He says, "I got to speak to you. It's very important." He says, "You have to fly right up." At the time, I had my son with me and I flew up, and I told my son to go into TWA if anything happens and I don't come back. I gave him money to call John Good or call his mother to pick him up.

I met the mayor and the mayor tells me about this guy on the boat who was on there and went to a fellow named Torcasio first and told him it was an FBI operation. And he said the guy came to his house and laid out the whole thing.

My argument was who's the agent? I says, me? It can't be. He says, "I trust you." I says, "Tony, I'll vouch for. McCarthy, forget it. Ernie—you couldn't even find Ernie half the time. Bruce is too young." And he believed us. But I wanted him to tell Tony this because for me to tell Tony, [189] they're liable to say I'm bullshitting.

So, I got a hold of John Good and I told him what happened. He said, "I got a meeting set up." We met the mayor that Monday, give or take a day. I think it was Monday, and he told Tony exactly what I'm telling you, that this guy came on. Tony didn't say nothing.

About November, we were at the townhouse and it was slipped that it was an informer—another informer they had on the boat. I didn't know it was for real and I got PO'd about it, because they stuck my neck out there by doing it.

Senator RUDMAN. You don't recall the name?

Mr. WEINBERG. No. I never met the gentleman. The only thing I know about him—he was supposed to be in the shipping business or something.

Senator RUDMAN. Well, let me ask you another question then. Does your recollection produce any knowledge that Mayor Errichetti, when he relayed this information to you, in fact, gave you the name of the person that had told him that this was an FBI operation?

Mr. WEINBERG. Yes, he gave me the name.

Senator RUDMAN. What was the name?

Mr. WEINBERG. I don't remember, to be honest with you.

Senator RUDMAN. Could it have been Myatt?

Mr. WEINBERG. I really don't know. The one that can answer that is John Good or Tony Amoroso. They know who it [190] was.

Senator RUDMAN. We'll ask them.

Mr. NEAL. Do I understand that the man who apparently told Mayor Errichetti that this might be an FBI operation was the man that was brought on the boat by the FBI?

Mr. WEINBERG. Yes. He was put on the boat—from my understanding, all right, he was put on the boat from agent Fitzpatrick for the reason to mingle and see if they could get any local work down there, because we had porno guys on there, drug guys, Prince Forti [phonetic]. We had drug runners.

So, he was on there, from my understanding, to see if he could get any additional information maybe that they could work cases in Florida.

Mr. NEAL. So, what we have is one FBI undercover informant telling a target of another operation that the other operation is an FBI operation?

Mr. Weinberg. That's correct. I didn't know anything about it. In fact, I didn't find out until much later and I got annoyed about it because they stuck my neck out on it.

Mr. Neal. Did you ever hear what the FBI did to that fellow Myatt, or whatever his name might have been?

Mr. Weinberg. I don't know his name. He wasn't heavy. If I remember the guy correctly, he was built like me; in fact, in a little better shape than I am. And he was supposed to have been in the shipping business; he had ships or something. [191] I remember seeing him on the boat, though.

Mr. Wheeler. Mr. Weinberg, on March 30, 1979, the day before the March 31 payoff to Kenneth MacDonald in the presence of Angelo Errichetti, Mayor Errichetti gave you a handwritten list of politicians, didn't he?

Mr. Weinberg. That's correct.

Mr. Wheeler. And that included eight names, six of which were State people, State legislators, and two of which were Congressmen. Is that right?

Mr. Weinberg. I don't remember exactly how many Congressmen's names were on there. I believe, and I'm only guessing, one name was [deleted] and I think the other name was [deleted].

Mr. Wheeler. No. The other name was Myers.

Mr. Weinberg. Was it Myers?

Mr. Wheeler. Yes.

Mr. Weinberg. It may have been. I really don't remember.

Mr. Wheeler. All right. What did you do with the handwritten list?

Mr. Weinberg. I turned it over to the FBI.

Mr. Wheeler. Did you ever have any discussion with anybody from the FBI or any of the prosecutors from the strike force about the people on that handwritten list?

Mr. Weinberg. Not that I remember. In fact, after he gave us the list, the following day he gave us a book with [192] their pictures marked off.

Mr. Wheeler. The picture book he gave you on the following day, though, was only New Jersey State legislators, right, and he put some checkmarks by some of those?

Mr. Weinberg. I think there were some Congressmen there, too. I'm not sure; I can't really answer you.

Mr. Wheeler. Well, I'll represent to you that it's only State legislators. The FBI has the documents.

Mr. Weinberg. They have both documents that were given as evidence.

Mr. Wheeler. Right, exactly, and we've seen them. What I want to know is, at any time between March 30 when you got the handwritten list containing the names of the two Congressmen and late July-early August 1979, several months later, did you ever have any discussion with anybody from the FBI about Congressman Myers or Congressman [deleted]?

Mr. Weinberg. No. It was just forgotten.

Mr. Wheeler. Do you have any idea why that was just forgotten?

Mr. Weinberg. I told you I don't ask questions with the FBI.

Mr. Wheeler. All right. Now, there did come a time, though, in fact, just a few days later—in fact, April 4—when you began to talk to Mayor Errichetti about arranging a meeting with [deleted]; **[193]** isn't that right?

Mr. **WEINBERG**. That is correct.

Mr. **WHEELER**. And, in fact, ultimately there was a meeting arranged with Mr. [deleted].

Mr. **WEINBERG**. That is correct.

Mr. **WHEELER**. Why did you pursue his name with Mr. Errichetti—the name of Mr. [deleted]?

Mr. **WEINBERG**. Well, it wasn't that I pursued it. I was told to go further and I went further. If they told me to go further to set the meeting, we set it up.

Mr. **WHEELER**. Someone told you to go further with Mr. [deleted]?

Mr. **WEINBERG**. Yes. John Good would say, after he got the name; "All right, set the meeting up," and it would be set up.

Mr. **WHEELER**. In other words, out of the eight names that were on the handwritten list on March 30 and the additional dozen to 20 names that were checked in the legislators' book on the 31st, [deleted] was the one name that Good picked out and said to you: "See what you can get Errichetti to do?"

Mr. **WEINBERG**. I don't know if [deleted] name was the name that was picked out from the book. I think that the name [deleted] came up separate by the mayor. I don't think it was just taken from the book and they get [deleted]. The mayor was pushing [deleted] and that's how it came about and they said: **[194]** "All right, further."

Whatever names I got from a book or given to me, they would go to them and the FBI would decide what to do. I didn't call the shots on them.

Mr. **WHEELER**. But you were spending a lot of time during this period with especially Tony Amoroso, weren't you?

Mr. **WEINBERG**. When we had meetings, I was with him. When we were down in Florida, I didn't see him.

Mr. **WHEELER**. Didn't you ever ask Tony Amoroso, or John Good, or anybody in the FBI why they picked just [deleted] and why they didn't pick any of those other individuals?

Mr. **WEINBERG**. I explained to you, I never asked the FBI anything. They paid me every month, they told me what to do, and that was it.

Mr. **WHEELER**. Also, through John Stowe, you ended up scheduling the meeting with Congressman Jenrette on August 6, 1979, didn't you.

Mr. **WEINBERG**. Was it August 6? No, it wasn't August 6.

Mr. **WHEELER**. August 6.

Mr. **WEINBERG**. Oh, that's right. We didn't meet him, though.

Mr. **WHEELER**. That's right. You scheduled a meeting, I said.

Mr. **WEINBERG**. I think it was a meeting set up to meet in **[195]** the congressional cafeteria or something.

Mr. **WHEELER**. Yes, here in Washington.

Mr. **WEINBERG**. Well, Stowe called that off. We didn't call that off.

Mr. **WHEELER**. Right.

Mr. **WEINBERG**. We never pushed it any further.

Mr. **WHEELER**. But you did schedule a meeting?

Mr. **WEINBERG**. Yes; we scheduled a meeting and then it was called off.

Mr. WHEELER. And that meeting was scheduled back in the middle of July, to be held on August 6, right?

Mr. WEINBERG. I don't know the exact time. I'd have to check, but it was set because Stowe was pushing. He told us he had a Congressman on the take, a crooked Congressman. And it was just forgotten.

Mr. WHEELER. But it was set several weeks earlier and canceled in between?

Mr. WEINBERG. Offhand, I don't know exactly when it was set, but we did have a meeting and it never came through.

Mr. WHEELER. Again, I'll represent to you that we have the tape, and the FBI will make it available to you, which indicates that that meeting was set as early as July 15, 1979. Now, that's some 11 days before July 26, when the asylum scenario was developed.

What scenario did you have in mind to use when you planned [196] the meeting with Congressman Jenrette for August 6?

Mr. WEINBERG. I'm going by memory on that. I believe that Congressman Jenrette at the time the meeting was set was looking for investment in some kind of real estate down there at the time, and I think that's one of the reasons. Because we couldn't do anything, it was called off.

Like I say, I'm going by memory of exactly what it was, you know. I think he had some kind of land development deal down there that he was going broke on and he was looking for money, because Stowe was looking for money for him.

Mr. WHEELER. In connection with the [deleted] meeting, you said, in answering some of Mr. Neal's questions, that in determining whether to rely on one of these middlemen—and I refer now to Errichetti, Criden, Silvestri, and so forth—that you basically went by their track record.

Errichetti's track record before he brought in Myers consisted of MacDonald and [deleted] and on [deleted] he misled you, didn't he?

Mr. WEINBERG. I wasn't at that meeting.

Mr. WHEELER. No, but he told you beforehand—before that meeting when you worked it out with him—that [deleted] would, in fact, take a bribe at that meeting, didn't he?

Mr. WEINBERG. Well, he said that [deleted] could be reached, and I wasn't there, so I don't know exactly what happened. But, apparently, he couldn't and he wasn't paid.

[197] Mr. WHEELER. Right. And were you told afterwards that Errichetti admitted after that meeting that, in fact, he hadn't briefed [deleted] as he had told you that he would?

Mr. WEINBERG. I wasn't told anything. All I know is it didn't go down and I never knew the reason why.

Mr. WHEELER. Well, if you didn't know, how could you make an evaluation of Errichetti's track record in deciding whether to believe him?

Mr. WEINBERG. Well, you got to remember a track—he still brought him in. You know, Errichetti's track record was good until he brought [deleted] or [deleted], or whatever his name was in. Then the guy went down the drain. He brought a ringer in on us and then we realized that something was wrong.

Mr. WHEELER. Do you think it's a good track record to bring somebody by telling you that he'll do something and he gets brought in and, in fact, that was a lie?

Mr. WEINBERG. Well, I don't know exactly if he said it on the tape. To say that the guy didn't say he wouldn't do anything—there was some talk about, one time I heard, that they were going to prosecute him; that they thought they had a case.

So, to answer, if it was good, I don't know exactly what the man said and it would be unfair to answer that he wouldn't take or he would take. I don't know what happened here.

Mr. WHEELER. You said that you turned in—did you finish [198] your answer?

Mr. WEINBERG. Well, I mean the guy did show up, so that was better. You got to remember Silvestri had us for a meeting and the guy never showed up.

Mr. WHEELER. You said that you turned in the tapes, as a general matter, in 1979, everyday, except when you were in Florida and sometimes they'd sit around for 2, 3, or 4 days. Is that right?

Mr. WEINBERG. That would be correct.

Mr. WHEELER. Why did you turn them in everyday?

Mr. WEINBERG. I was on the road with FBI agents, so if I made any tapes, I gave them to them.

Mr. WHEELER. In other words—well, did you think they expected you to turn them in promptly? Is that why you turned them in so promptly?

Mr. WEINBERG. No, they were there, so I gave them to them. What am I going to do, carry them? I didn't want to carry them.

Mr. WHEELER. You don't think they cared one way or the other whether you turned them in that day, or a week later, or a month later?

Mr. WEINBERG. I can't answer what they cared about.

Mr. WHEELER. They never indicated to you that they wanted you to turn the tapes in as promptly as possible?

Mr. WEINBERG. Well, if you're living on Hutchinson [199] Island, all right, and you got to go down 60 miles of driving, you're not going to drive down and bring two or three tapes.

Mr. WHEELER. Mr. Weinberg, did anybody from the FBI, either Mr. Amoroso or Mr. Good, ever tell you at any time, either in 1977, 1978, or 1979, that they wanted you to turn in the tapes to them as promptly as possible, whatever possible might be?

Mr. WEINBERG. Well, they would like them as promptly as possible, but I wasn't going to drive that far down and bring them a bunch of tapes.

Mr. WHEELER. Did they tell you they wanted them as promptly as possible?

Mr. WEINBERG. Offhand, I can't say they told me or didn't tell me. I really don't remember.

Mr. WHEELER. You don't remember their ever giving you an instruction, "Mr. Weinberg," or "Mel, give us the tapes as soon as you can after you record them?"

Mr. WEINBERG. If they asked for the tapes—if we were on the road, they got the tape. There was an agent there and I gave it to him because I wasn't going to carry them.

Mr. WHEELER. The answer is no?

Mr. **Weinberg**. No. Don't put words in my mouth now and say the answer is no.

Mr. **Wheeler**. Well, is the answer yes or no?

Mr. **Weinberg**. Well, I'm explaining to you. If I was on [200] the road, I gave them the tapes. If I was down on Hutchinson Island and I had tapes and it was anything important, I'd call them up and they would send an agent up to pick them up.

Mr. **Wheeler**. Let me try to make the question simpler.

Mr. **Weinberg**. It's going to be the same answer.

Mr. **Wheeler**. Well, I'll make it as simple as I can, Mr. Weinberg.

Mr. **Weinberg**. I'll make mine simple.

Mr. **Wheeler**. I'd appreciate that. That would be a first. Did anybody from the FBI ever say to you, Mr. Weinberg, "Mel," or "Mr. Weinberg, turn in the tapes as soon as you can after the conversations are recorded?"

Mr. **Weinberg**. They didn't have to say that.

Mr. **Wheeler**. Did they ever say it?

Mr. **Weinberg**. I don't know if they said it or not.

Mr. **Wheeler**. All right. You don't recall whether they did?

Mr. **Dienst**. Mr. Chairman, I think the question has been asked and answered about five times.

Mr. **Wheeler**. Mr. Chairman, I respectfully object and say that that question hasn't been answered even once yet. And I would even ask the Chair, if he would please, to ask the witness to answer it.

Senator **Mathias**. Can you give us your best recollection?

Mr. **Weinberg**. I'm giving my best. When we were on the [201] road, they got the tapes when they were being made.

Senator **Mathias**. That's not his question.

Mr. **Weinberg**. If I was in the townhouse, they took them. If I was in Hutchinson Island, they didn't get them until I got an important tape or they came up to pick them up.

Mr. **Wheeler**. Do you want to retract your objection, counsel?

Mr. **Dienst**. No; I don't.

Senator **Mathias**. Mr. Wheeler, see if you can restate the question.

Senator **Rudman**. Mr. Chairman, counsel obviously understands the committee's problem with his client's answer. This client is giving Mr. Wheeler, you know, a commentary and a conclusion. It's a very simple question. It's either "yes," "no," or "I don't remember."

Why don't you answer it that way, Mr. Weinberg, and we'll get on with this?

Mr. **Dienst**. Senator, I believe he did answer the question, and I think the record reflects that.

Senator **Rudman**. Well, I'm going to ask it again, and I have that right as a committee member. I mean I want to know if you got the instruction. That's all; very simple.

Mr. **Weinberg**. I don't remember.

Senator **Rudman**. Fine. That's your answer. We'll go on to the next question.

[202] Mr. **Wheeler**. Now, Mr. Weinberg, did you ever get an instruction from anybody in the FBI with respect to whether you ought to turn in evidence that you obtained of criminal acts?

Mr. **Weinberg**. If I had any evidence of a criminal act, I would turn it right in.

Mr. **Wheeler**. Did you ever get an instruction to that effect, Mr. Weinberg?

Mr. **Weinberg**. I don't remember if I got instructions.

Senator **Huddleston**. Well, can we get the point across to you, Mr. Weinberg, and to the counselor that the essence of this whole investigation is to find out how the Federal Bureau of Investigation operated an undercover operation? And in finding that out, we've got to know what kind of specific instructions you got.

We're not particularly interested in what you did. Did the FBI tell you and give you some instruction on how to handle evidence or how to handle the people you were working with? That's why the question was asked, and you did not answer it until the final——

Mr. **Weinberg**. If I got evidence——

Senator **Huddleston**. Just tell us. Did you get the instructions from the FBI?

Mr. **Weinberg**. I don't remember if I got instructions, yes or no, to be honest with you.

[203] Senator **Huddleston**. You operated this whole scam and don't know whether they told you what to do or not?

Mr. **Weinberg**. I didn't make any move unless they told me to make it, But I don't know if——

Senator **Huddleston**. Well, on specific questions, then, can't you give us that kind of statement?

Mr. **Weinberg**. I don't remember if they said, "We want every tape immediately."

Senator **Huddleston**. They didn't——

Mr. **Weinberg**. I don't remember if they said it to me or not.

Senator **Huddleston**. I'll turn it back to counsel.

Mr. **Wheeler**. Thank you, Senator.

Mr. Weinberg, do you recall, on March 11, 1979, providing several documents to agent Myron Fuller. the documents being bank securities and certificates of deposit?

Mr. **Weinberg**. What I gave Myron Fuller, and I don't know if it was March 11, all right—Myron Fuller asked me for copies of the CD's that we received. Before we take a CD, we ask for a sample. And I went up to the RA, I made some copies of the samples we had to send to Myron.

Now, I don't remember if I gave them personally. I thought I gave them to another agent to give to Myron. So, I don't really know if I gave them directly to Myron or another agent. I thought I gave them to another agent to give to [204] Myron.

Mr. **Wheeler**. Let me be more specific. Do you recall, March 11, 1979, meeting agent Myron Fuller in the airport in New York and flying on the same flight with him down to Florida and, during the course of that flight, handing him the following documents: 11 blank certificates of deposit on Chemical Bank, one Xeroxed copy of two checks on First National Bank of Tehran, two blank CD's on the Merchants & Shipowners Bank, Ltd., and two blank certificates of deposit on Citibank?

Mr. WEINBERG. I don't remember flying down with him to Florida, all right? I know I gave him CD's.

Mr WHEELER. On approximately March 11, 1979?

Mr. WEINBERG. I don't know when it was, but I believe that I gave them to another agent to give to him, because he claimed he was keeping a log, making up a CD book, because he did handle most of the white-collar crime in the Bureau, and he was good at it.

Mr. WHEELER. Did you give them to this other agent to give to Myron Fuller?

Mr. WEINBERG. Yes. Myron asked me to get the samples so he could make his book with other samples. I made photostat copies of them all to give to him.

Mr. WHEELER. Do you recall what year it was that you gave these documents to the other agent to give to Myron [205] Fuller?

Mr. WEINBERG. No.

Mr. WHEELER. Do you recall ever giving Myron Fuller any securities directly?

Mr. WEINBERG. Not offhand, because the date he's saying, all right, was the time of the party on the boat—you know, getting ready for the boat. The boat burned down St. Paddy's Day and we were down in Florida trying to get hotel rooms and get a command center set up so they could operate out of it. And I'm not sure because I believe I was down in Florida already on that date.

I'm not arguing with what he said. I really don't know, but I did give him copies of the CD's. There's no argument about it. That, I did give him.

Mr. WHEELER. Do you have any reason to believe that Myron Fuller would knowingly create a false document that he would file in the FBI files describing something you had done with respect to him?

Mr. WEINBERG. No.

Mr. WHEELER. Let me read to you—I know you've seen this document before.

Mr. WEINBERG. Yes.

Mr. WHEELER. But let me read it to you again. This is a document—what's called an FD 302, which, as you know, is the standard FBI form for recording conversations, and it's [206] dated March 11, 1979. It refers to a conversation, a meeting he had with you on March 11, 1979, and it was even transcribed on March 11, 1979, or at least it purports to have been.

It says as follows:

> On March 11, 1979, Mel Weinberg provided the following documents to SA [special agent] Myron R. Fuller: 11 blank certificates of deposit, CD's on Chemical Bank; one xeroxed copy of two checks on First National Bank of Tehran; two blank CD's on the Merchants and Shipowners Bank, Ltd.; and two blank CD's on Citibank. Weinberg advised special agent Fuller that in November 1978, Bill Rosenberg gave Weinberg one Citibank CD, three Chemical Bank CD's, and a $600,000 CD on the First National Bank of Tehran. Weinberg said that he gave Mayor Angelo Errichetti one Citibank CD and one Chemical Bank CD. Mayor Errichetti subsequently had additional copies printed of these CD's and gave them to Weinberg.

Now, are you denying that on March 11, 1979, you had such a conversation with special agent Fuller and you gave him those documents?

Mr. WEINBERG. I'm not denying that I gave him the documents. I'm not sure of the date and going down to Florida with him, all right? That's the only thing I'm not sure of, because I believe I was down in Florida already. And remember he wanted these documents.

Now, the CD I gave him was a certified check, all right? [207] Wasn't that check made out?

Mr. WHEELER. I don't know. I don't have the check in front of me.

Mr. WEINBERG. Because that check came from Tony Costanza and we mailed it down to Florida.

Mr. WHEELER. Check to Yassir Habib for $200,000?

Mr. WEINBERG. Yes.

Mr. WHEELER. It's not signed.

Mr. WEINBERG. That's a certified check?

Mr. WHEELER. Well, it doesn't say "certified" on the copies I have, but these are Xeroxed copies.

Mr. WEINBERG. Could I see it? You know, it would ring a bell. [Pause.]

Mr. WEINBERG. It says "certified" up there, all right, on the side?

Mr. WHEELER. Yes.

Mr. WEINBERG. This check here—in fact, I think there was two checks here—was supposed to be—we were supposed to pick them up at 23d Street from Tony Costanza. Costanza, I think his name is pronounced. I was waiting there on the corner while Jack went to the Bureau. I'm waiting and waiting, and Jack came back and said, "I'm not waiting any longer." He said, "Let's go." I said, "Well, we got to pick these checks up. The guy's supposed to bring them." He says, "I'm [208] not waiting."

The guy called me back and I says, "Send them down to the Florida post office box." There should be an envelope with a seal where he sent it, you know. These checks went to Florida, so I have to believe that in order for me to give him this here, these had to be sent and I had to get copies made in Florida.

Mr. WHEELER. Mr. Weinberg——

Mr. WEINBERG. These were not given up to the New York office. They went down to Florida office.

Mr. WHEELER. Mr. Weinberg, you'll notice that the 302 that those are attached to that I just read to you and read into the record says that those documents—you told Myron Fuller you had obtained those documents in November of 1978. Is that a true statement?

Mr. WEINBERG. I don't believe that is really a true statement because I wouldn't get all these documents at one time in, say, November or whatever date it was. These here came, like I told you—these checks—if you can get the date when it was mailed down to Florida—for me to get a copy of these, I would have to go to the RA and say to the guy in charge there, "Gunnar, give me a copy because Myron Fuller wants a copy of these," all right?

Mr. WHEELER. So, you don't think you told Myron Fuller that?

[209] Mr. WEINBERG. No, because I wouldn't be able to get all these together. It would take some time to get these together for him.

Mr. WHEELER. When you were getting ready to move down to Florida in 1979, what did you do with your furniture?

Mr. WEINBERG. Furniture? We're getting into a touchy subject. She was a sick woman and she didn't want to take any of the furniture with her. Now, according to the psychiatrist, to move her down to Florida and take her away—because I knew when this thing breaks, there's going to be a lot of flak up there and I have to get her out of town and relocate her.

So, the psychiatrist says, "You've got to be very careful with her because you're taking her teething blanket away from her, her home up there." So, we said, "We'll get you all new furniture. I'll buy you everything new." And I flew her down, like, a month before or 2 months before. I let her pick out the townhouse she wanted.

So, she didn't want any of the furniture. She wanted to sell it. I put the furniture up for sale. The agents—Amoroso bought so much, and so much was bought for an undercover operation. The agents did her a favor by taking it. I mean, you can look at it any way you want, but they actually did her a favor to take it. Otherwise, she would have never got the price she got.

Mr. WHEELER. When you say so much was bought for an [210] undercover operation, who bought it?

Mr. WEINBERG. I believe John Good did.

Mr. WHEELER. Did you sell any furniture to the Suffolk County Police Department?

Mr. WEINBERG. The Suffolk County Police Department?

Mr. WHEELER. Right.

Mr. WEINBERG. Not that I know of.

Mr. WHEELER. The Suffolk County Police Department didn't pay you $3,500 for furniture?

Mr. WEINBERG. Oh, that was an undercover operation with the FBI and Suffolk County. It was a combined operation, so I guess they're the ones that said, "Pay for it."

Mr. WHEELER. And they paid you $3,500 for that furniture?

Mr. WEINBERG. That's correct.

Mr. WHEELER. On July 9, 1980, Mr. Weinburg, you testified in a pretrial due process hearing with respect to your salary and bonuses—some of the questions, in fact, that Senator Rudman asked you. And you were asked what bonuses you had received and you said that you thought that the only bonus you had received was a $5,000 bonus sometime in March or April of 1979. Do you remember saying that?

Mr. WEINBERG. Not offhand. I don't know how you can say that when I had—they gave me the whole list of all the bonuses. It was in front of me. I believe the question—if [211] you look at the whole question and what it was saying——

Mr. WHEELER. All right. Here is the testimony. This is from the *Jannotti-Schwartz* pretrial on July 9, 1980.

> *Question*. Now, you were paid $3,000 every month following this February meeting in 1979?
>
> Answer. Correct.

> *Question.* Did you get any bonuses?
> Answer. I think I got one bonus, actually, but it came from Miami when I was doing some work down in Miami.
> *Question.* You were working on different projects other than just Abscam.
> Answer. Well, it was all Abscam, actually, from my understanding.
> *Question.* And when did you get the bonus in Miami?
> Answer. Well, I was paid up in New York. I think it was around March or April.
> *Question.* Of 1979?
> Answer. Right.
> *Question.* And how much did you get?
> Answer. I think it was $5,000.

Does that refresh your recollection?

Mr. **WEINBERG**. If it says I said it, I did say it. But, again, you're going back to when I went to the pretrial in Philadelphia. I told you I got out of a sick bed. I was taking drugs for pain and I just misunderstood and I corrected it [212] later on.

I remember, I went up there. I got called to go up there at 10 at night and I flew all night and got in there early in the morning. I took the stand and didn't speak to anybody.

Mr. **WHEELER**. You went to a meeting in Washington, D.C., with a number of prosecutors on May 12, May 13, and May 14 of 1979, didn't you?

Mr. **WEINBERG**. In Washington, D.C.?

Mr. **WHEELER**. That's right. Mr. Good, Mr. Amoroso, and several prosecutors, including Irv Nathan.

Mr. **WEINBERG**. In 1979?

Mr. **WHEELER**. I'm sorry; 1980.

Mr. **WEINBERG**. I never met Irv Nathan until 1980. That is right.

Mr. **WHEELER**. And in 1980, May 12 to May 14, you did attend a series——

Mr. **WEINBERG**. I met Irv Nathan and Heymann at that time.

Mr. **WHEELER**. And John Good was there?

Mr. **WEINBERG**. John Good and Amoroso was there.

Mr. **WHEELER**. And during the course of those meetings, one of the topics was, what has been your compensation and what kind of bonus commitments have been made to you, isn't that right?

Mr. **WEINBERG**. I believe they talked about that, yes.

Mr. **WHEELER**. And during the course of that conversation, [213] John Good, in summarizing what had been paid to you, stated that one of the bonuses that you had received was a $15,000 bonus in June of 1979, isn't that right?

Mr. **WEINBERG**. I would have to look at the list of what bonuses I got. I'm not denying I got the bonuses, but——

Mr. **WHEELER**. But the fact is, Mr. Weinberg, that just 2 months before you testified under oath in the *Jannotti-Schwartz* pretrial that you had only received one bonus, and that had been for $5,000, in March or April—just 2 months before, you had attended a series of meetings that lasted over 3 days in which your bonuses had been a topic of discussion in your presence. And you had been reminded that one of your bonuses was $15,000.

And further, Mr. Weinberg, $15,000 at that time was, by a substantial amount, the largest bonus you had ever received, isn't that right?

Mr. **WEINBERG**. No, that wasn't right. I got $30,000 from the insurance company.

Mr. **Wheeler**. That's not a bonus from the FBI, is it?

Mr. **Weinberg**. Well, it was the FBI that arranged for me to get it.

Mr. **Wheeler**. But it wasn't a bonus from the FBI, was it?

Mr. **Weinberg**. I was not at no meeting for 3 days down there. I was there when I met Irv Nathan, I think it was for 1 day.

[214] Mr. **Wheeler**. In October 1978, Mr. Weinberg, right after the Bell buy-bust situation on October 4, did John Good tell you that the FBI was no longer interested in buy-bust situations on securities?

Mr. **Weinberg**. He said he was no more interested in CD's; he didn't want no more CD's.

Mr. **Wheeler**. All right. And what else did you have going in Abscam at that time? If he wasn't interested in CD's what was he interested in?

Mr. **Weinberg**. Well, we were into Vegas. This is 1978, right?

Mr. **Wheeler**. That's right, October.

Mr. **Weinberg**. We were involved with Big George. We were involved with gun-running. And he didn't want no more CD's whatsoever.

Mr. **Wheeler**. You were involved in gunrunning other than with respect to Bell?

Mr. **Weinberg**. No. This was the other group, and that group. They were supposed to supply us guns.

Mr. **Wheeler**. And that was in October—as late as October of 1978?

Mr. **Weinberg**. That was in 1978 sometime, right.

Mr. **Wheeler**. But it was earlier in 1978, wasn't it?

Mr. **Weinberg**. Well, you don't just meet with Big George and push him for guns, you know. You got to work it gradually [215] with him.

Mr. **Wheeler**. What did Mr. Good tell you was the reason why they were no longer interested in CD's?

Mr. **Weinberg**. Because I believe the reason was there was no case on them. The CD's—there was no prosecuting case involving CD's.

Mr. **Wheeler**. When Errichetti flew down to Florida on January 25, 1979—let's see, your testimony is that you didn't expect him. That was a surprise to you. is that right?

Mr. **Weinberg**. That's correct.

Mr. **Wheeler**. And when he got down there, or at some point after he arrived down there, he called you and said, "I'm in Florida?"

Mr. **Weinberg**. He called me. Now, there's a discrepancy there. They say he called me at 2 in the morning.

Mr. **Wheeler**. Three o'clock in the morning.

Mr. **Weinberg**. Three o'clock. And I find that hard to believe because I wouldn't get up for nobody to answer a phone.

Mr. **Wheeler**. Well, when he called you, what did he say?

Mr. **Weinberg**. "I'm in Florida and I'd like to see you."

Mr. **Wheeler**. Did he say, "It's an emergency?"

Mr. **Weinberg**. No.

Mr. **Wheeler**. He just said, "I want to see you?"

Mr. **Weinberg**. That's correct.

Mr. WHEELER. And after he called you, you said you [216] immediately called the West Palm RA?

Mr. WEINBERG. In fact, I went down to the West Palm RA.

Mr. WHEELER. Who did you call?

Mr. WEINBERG. Gunnar Askeland. I met Gunnar Askeland at the RA and I told him where the mayor was.

Mr. WHEELER. Do you have a good relationship with Gunnar Askeland?

Mr. WEINBERG. So-so.

Mr. WHEELER. Would it surprise you if I told you he denies that that ever happened?

Mr. WEINBERG. It wouldn't surprise me.

Mr. WHEELER. And it's your contention that his 302 that he filled out on that very day, January 26, stating that you told him that you had received a call from Errichetti at 3 in the morning telling you that there was an emergency and he had to see you and that you then went to see him at 7 that morning—you're saying that that's erroneous?

Mr. WEINBERG. Well, first of all, how would he get into West Palm at 3 in the morning?

Mr. WHEELER. I don't know. Are you saying that's erroneous?

Mr. WEINBERG. I would say, because there's no flights coming into West Palm. I think the airport closes down at 12.

Mr. WHEELER. Do you deny that you told that to Askeland, [217] even if it factually was erroneous?

Mr. WEINBERG. I don't know what Askeland puts in 302's, or any agent puts in 302's. All I can tell you is that the mayor came in. I met him that morning; what time, I forgot. And I met him and he told me he was down on some other business. He gave me some CD's. As soon as he gave me the CD's I told him, "I got to go." So, I ran them over to the RA.

I was told not to see the mayor; that John Good didn't want it. And I went against their wish because if I didn't see him, he's going to think it's funny I didn't go see him. And then I took him for a ride after that. I drove him down and we went to jai alai and we went to the dog track at night.

Mr. WHEELER. You said that back in the early days of Abscam, you had already known Santini and Sabloski, is that right?

Mr. WEINBERG. That's correct.

Mr. WHEELER. How long had you known them?

Mr. WEINBERG. I'd say maybe about a year.

Mr. WHEELER. When you knew them back in, I guess it would be, what, sometime 1977 or 1976, did they know that you were involved in illegal activities at that time?

Mr. WEINBERG. Oh, yes.

Mr. WHEELER. How did you convince them then—once you set up the Abdul enterprises scenario, how did you convince [218] them that this was legitimate, and somehow you, who they knew as a criminal, were now connected as a financial adviser to a multi-hundred-million-dollar enterprise?

Mr. WEINBERG. Con men never ask questions when they find they got an office where they can hang their hat. They were just glad that they had somebody to deal with so if they made a deal with a guy, they can push it off onto somebody else.

Mr. WHEELER. You said that a name that came up several times during that early period in Abscam—and when I say early period now, I mean the late summer and fall of 1978—was [deleted] in [deleted]. How did his name come up?

Mr. WEINBERG. Well, his name came up through Dinallo who was with Guccione who says he can get a license; that [deleted] owes him a license. Jerry Catanktine (phonetic)—his name came up with them.

[deleted] came up to the office—not [deleted]—Dinallo came up to the office to meet McCarthy. And everybody, it seemed, that got a license in Atlantic City—[deleted] name was attached to it.

Mr. WHEELER. Was there a suggestion or an actual statement that [deleted] was corrupt?

Mr. WEINBERG. No. There's no way of saying it as an accurate statement. I mean, it was real. I'm only telling you what they said. This is something the FBI has to judge how **[219]** real it was and how real it wasn't.

Mr. WHEELER. When was the earliest in Abscam that you heard [deleted] name used in that connection?

Mr. WEINBERG. Well, when we went down to meet Tony Ducasio, he said that he had [deleted] in his pocket; that, you know, [deleted] will get his license and run a casino. Dinallo said it to us.

Mr. WHEELER. Was that in 1978 or 1979?

Mr. WEINBERG. That would be in 1979.

Mr. WHEELER. Did [deleted] name come up in 1978?

Mr. WEINBERG. It may have came up with the mayor, because we only met the mayor, I think, what, November or December of 1978? I mean, it may have came up. But we didn't know who [deleted] was at the time.

Mr. WHEELER. You know who John Jacobs is, don't you?

Mr. WEINBERG. He's a U.S. attorney.

Mr. WHEELER. Well, he's one of the prosecutors who used to be a prosecutor in the eastern district with Tom Puccio, right?

Mr. WEINBERG. Right.

Mr. WHEELER. And you dealt with him a lot in 1978, didn't you?

Mr. WEINBERG. In 1978?

Mr. WHEELER. Right.

Mr. WEINBERG. No.

[220] Mr. WHEELER. You didn't deal with him in 1978?

Mr. WEINBERG. In 1978? The only time I really met John Jacobs would be on the Errichetti payoff, and at the party on the boat.

Mr. WHEELER. That's the only time you met John Jacobs?

Mr. WEINBERG. As far as I know that I can think of. I didn't see him before that anywhere.

Mr. WHEELER. Do you know that John Jacobs has testified that he was the prosecutor who was in charge of Abscam from its inception in May of 1978, and said that he spent countless perhaps thousands of hours with you?

Mr. WEINBERG. Where? Thousands of hours with me?

Mr. WHEELER. That's right.

Mr. WEINBERG. Well, I'd like to know where he spent thousands of hours with me. That's a lot of time.

Mr. WHEELER. Your testimony is that you only spent two or three occasions with him?

Mr. WEINBERG. I met John Jacobs the first time—I believe it was the mayor's payoff, and then I met him at the party on the boat, all right? And then I met him—he was at MacDonald's payoff, and that was the only time that I remember seeing him. Now, I don't know where he gets thousands of hours. I was never in one place long enough to spend thousands of hours with somebody.

Mr. WHEELER. The undercover operation that you dealt [221] with Mr. Meltzer on was an operation called Palmscam, is that right?

Mr. WEINBERG. One second. I never dealt with Meltzer. I never met Meltzer. I seen Meltzer, but I never met him.

Mr. WHEELER. Well, you were talking, when Mr. Neal was asking you some questions earlier this morning, about a county commissioner down in Florida that you had some involvement with.

Mr. WEINBERG. No. I told him that Jack McCarthy sent Meltzer a letter. He was dealing with Meltzer and a guy named Harry Sukoff or something like that. And I did not get involved with Meltzer. The only time I got involved with Meltzer was we went down to meet Black Sam which I wasn't too keen about. And I told Jack at the time we were being set up by meeting them; that Meltzer is using us. He didn't listen.

We met Black Sam and he brought Black Sam over. He wasn't supposed to. He was supposed to be looking at a piece of land, and he doublecrosed the agent and he brought them over.

When I heard he was downstairs—Jack asked me to walk him down and to bring Black Sam and that group up. So, I walked him down, but I stood in the background because I didn't want to meet Meltzer.

Mr. WHEELER. Did there come a time in late October of 1978 when Gunnar Askeland said to you, "We're no longer [222] interested in CD's; we're now interested in corrupt politicians?"

Mr. WEINBERG. Gunnar?

Mr. WHEELER. That's right.

Mr. WEINBERG. Gunnar had nothing to say.

Mr. WHEELER. He didn't say that to you?

Mr. WEINBERG. No.

Mr. WHEELER. Did anyone ever talk to you about Mayor [deleted]?

Mr. WEINBERG. Yes.

Mr. WHEELER. Who talked to you about Mayor [deleted]?

Mr. WEINBERG. Weiss was the gentleman that first approached us and, between me and you, they were trying to rip us off. He claimed he knew—in fact, we met Mayor [deleted]. We went to his office, and it was me and Gunnar that went there, I believe. And we met Mayor [deleted], and his secretary or some broad Weiss had was supposed to arrange that we give her the money; she's going to [deleted]. And it was strictly a ripoff and we never went ahead with it.

Then Big George [deleted] man in and there was a $25,000 payoff, and the Bureau apparently—which I'm not sure I know—killed it, didn't want to do it.

Mr. WHEELER. So, you're saying that you were told that [deleted] was corrupt?

Mr. WEINBERG. We were told by Weiss. We never met the [223] girl. And we were told Big George operated out of [deleted]—in fact, New York Al was the guy that operated out of town.

Mr. WHEELER. How about Commissioner [deleted]?

Mr. WEINBERG. [deleted]?

Mr. WHEELER. [deleted].

Mr. WEINBERG. No, I don't know him.

Mr. WHEELER. Were you an informant in connection with an operation called Goldcon?

Mr. WEINBERG. I was receiving money—payments, I believe, on my car, all right, on the van or the truck at the time from them when I was working down there.

Mr. WHEELER. In Florida?

Mr. WEINBERG. Yes; if I was working for Goldcon, I didn't know it.

Mr. WHEELER. In 1978?

Mr. WEINBERG. In 1978, and I think Goldcon was in 1979. I'm not sure, so I shouldn't even say. I believe Tony was in charge of Goldcon, but I'm not sure of that.

Mr. NEAL. I have just two or three cleanup questions here to make sure that we've touched all the bases we've heard about.

Did Marie Weinberg have a hysterectomy in—I believe it was in November-December 1980?

Mr. WEINBERG. Marie Weinberg told me she had to go in [224] for a hysterectomy; that she needed money. She was pushing me for money. I knew that she was hemorrhaging down there, but I didn't know if she went in. I did give her money for a hysterectomy.

Mr. NEAL. Did you then get that money back from the FBI?

Mr. WEINBERG. The FBI wouldn't give me money. I was trying to get some advance money. I think they gave me a month in advance.

Mr. NEAL. There's an FBI document that reflects that on December 22, 1980, the FBI paid you $2,600-some-odd to cover hospitalization of Marie Weinberg.

Mr. WEINBERG. They gave me—I paid that back, if I'm not mistaken. They gave it to me in advance—like a month in advance—to give her the money. She told me she was going in for a hysterectomy.

Mr. NEAL. But the point is you told the FBI that this was to cover hospitalization for Marie Weinberg?

Mr. WEINBERG. I told them exactly what she told me. In fact, I even—I said, "We got Blue Cross; put it in Blue Cross."

Mr. NEAL. Let me just go through quickly. You told the FBI that you needed money to pay the hospitalization of Marie Weinberg, and the FBI gave you some $2,650 for that purpose?

Mr. WEINBERG. They gave me an advance on my salary.

Mr. NEAL. OK. They gave you that money for that [225] purpose?

Mr. WEINBERG. Right.

Mr. NEAL. All right. Now, are you aware that Marie Weinberg alleged that you falsely told the FBI that she had a hysterectomy in order to get the money?

Mr. WEINBERG. I know she said that.

Mr. **Neal**. But that is untrue?

Mr. **Weinberg**. That's untrue. I gave her the money. My son gave a statement. She told him the same story.

Mr. **Neal**. I'm getting these things now because they've come up and I want to get your position on them. Did you ever provide a cover story for agent Brady.

Mr. **Weinberg**. I don't know what you mean by a cover story.

Mr. **Neal**. All right, all right. Was there ever a time when FBI agent Brady was supposed to be with you and he received calls? In fact, he wasn't with you; he went to Denver to visit somebody and had you tell the FBI that he just stepped out?

Mr. **Weinberg**. I never told the FBI he stepped out. As far as I know, he notified the FBI that he was going to visit—I don't know if it was Denver or where he went. He did go away on a weekend, I believe it was, and he was back on Monday. And he says, "Is it all right?" I says, "As long as John knows it, it doesn't make a bit of difference to me."

[226] Mr. **Neal**. So, the answer to my question is you never provided what I would call cover for FBI agent Brady.

Mr. **Weinberg**. As far as I know, the FBI knew that he went out and went to Denver. I don't even know if it was Denver; I don't know where he went.

Mr. **Neal**. I understand. But agent Brady said he was going to be staying with you. He said, "Is it all right if I leave for the weekend?" And you said, "As long as John Good knows."

Mr. **Weinberg**. He didn't have to ask me.

Mr. **Neal**. Is that the answer?

Mr. **Weinberg**. That's the answer.

Mr. **Neal**. All right.

Mr. **Weinberg**. He went away for a weekend.

Mr. **Neal**. Then it's not true that you would tell the FBI when he was out there that he'd just stepped out, and pretend that he'd just stepped out of the room or stepped outside the building?

Mr. **Weinberg**. First of all, the FBI never called to see where he was.

Mr. **Neal**. So, you didn't tell them that? That's not true?

Mr. **Weinberg**. I never told them that.

Mr. **Neal**. All right. You understand that Mrs. Weinberg says that occurred?

[227] Mr. **Weinberg**. I understand that.

Mr. **Neal**. All right. Did you ever give an organ to Mr. McCarthy worth $4,000?

Mr. **Weinberg**. No; the story on the organ is I had an organ when she moved. We couldn't sell the organ. The organ people offered us $500 to take it back. I said that we were leaving the house. In fact, we didn't sell the house when I moved her out of there; it was still empty. So, I said to John: "If we leave the organ there, they're going to steal it," because the neighborhood was going bad.

So, he took the organ and put it in his father's house. Sometime later—I don't know exactly how many months—I said to him: "John, I think I got it sold for $1,000." He says: "Let me ask my father; maybe he'll buy it." He bought it and gave me a check for $1,000. The check was given to her. She cashed it. It's a matter of record; it's in the bank account.

Mr. **Neal.** Fine, now, did you ever give agent McShane her fur coats?

Mr. **Weinberg.** McShane bought two coats—actually, he bought one; one was given to him. I believe the price—and that's in her bank book, too.

Mr. **Neal.** Look, I'm just trying to get your position——

Mr. **Weinberg.** I know.

Mr. **Neal.** Do you understand the allegations have been made? We'll get out of here quick.

[228] Mr. **Weinberg.** I understand the allegations.

Mr. **Neal.** You understand these allegations have been made. I'm simply asking you what's the truth of the matter.

Mr. **Weinberg.** I want to tell you the true story behind it so you'll know it. He bought one fur coat. I forgot what kind it was, and I believe it was $600. He paid it on the installment plan. He gave her so many checks and it's in the back of her checkbook that she put the checks in. And he went and said that he loaned me $600 on the installment plan.

Mr. **Neal.** One other thing, one other last question. You have stated at times, I believe, that you were promised $100,000 after the end of Abscam?

Mr. **Weinberg.** That's correct.

Mr. **Neal.** Were you promised a $100,000 bonus after the end of Abscam?

Mr. **Weinberg.** This was testified in the courts that I would get $100,000.

Mr. **Neal.** My question is, Were you promised $100,000 from the FBI at the end of Abscam?

Mr. **Weinberg.** I was told I was going to get $100,000 at the end of Abscam, and this was also verified. I think his name was Nathan. He didn't tell me. This is a matter or record there. It's in the record.

Mr. **Neal.** Wait just a minute. Were you told—I'll leave out the word "promised"——

[229] Mr. **Weinberg.** I was told by John Good.

Mr. **Neal.** Were you told that at the conclusion of Abscam, you'd be given a bonus of $100,000?

Mr. **Weinberg.** I would be given $100,000.

Mr. **Neal.** All right. Who told you that and when?

Mr. **Weinberg.** The first time I heard it from John, the second time I heard in the courts, and the third I heard it that Nathan said it.

Mr. **Neal.** I want to know who told you.

Mr. **Weinberg.** Well, I'm telling you Nathan—it's a matter of record—put in there to say that there's $100,000 going to be paid to me.

Mr. **Neal.** Who told you?

Mr. **Weinberg.** The first time, John.

Mr. **Neal.** OK. The other times, you heard it in court, you said?

Mr. **Weinberg.** I heard it in the courts. It's a matter of record in the courts.

Mr. **Neal.** When did John Good tell you that at the end of Abscam you'd receive $100,000 from the FBI?

Mr. **Weinberg.** The exact date, I don't know.

Mr. NEAL. Well, approximate date, the period of the year. What year?

Mr. WEINBERG. Sometime in maybe 1981 or the end of 1980.

Mr. NEAL. OK. At the end of 1980 or 1981, John Good [230] said to you: "At the conclusion of Abscam, there will be $100,000 for you?"

Mr. WEINBERG. He said I'm being put in for $100,000.

Mr. NEAL. Now, wait a minute. That's a difference. Did he say you'd get $100,000 or he'd put in for $100,000?

Mr. WEINBERG. Mr. Neal, I know that John good can't promise me anything.

Mr. NEAL. OK.

Mr. WEINBERG. He said: "There's $100,000, a matter of record they're going to pay you." They paid me $50,000.

Mr. NEAL. It is important here——

Senator RUDMAN. Excuse me, counsel.

They paid you $50,000?

Mr. WEINBERG. I got $50,000.

Senator RUDMAN. When was that?

Mr. WEINBERG. I got that, I believe, in 1981 sometime. And one of the reasons I got it, all right, was to pay my taxes.

Senator RUDMAN. I see. So, when I asked you the question about an hour ago and we went through the bonuses, we started with the pay of $1,000, $3,000, $2,000. We had bonuses of $15,000, $10,000, and $5,000. We had a $30,000 insurance payment, but you forgot to tell me about the $50,000.

Mr. WEINBERG. No, I didn't forget, sir.

Senator RUDMAN. Then why didn't you tell me?

[231] Mr. WEINBERG. Well, I'll explain to you why. I was under the impression we were talking about bonuses I got during the operation. This was after the operation was closed down that I got the 50. It's a matter of record. I wasn't hiding it.

Mr. NEAL. Mr. Weinberg, you haven't gotten your last 50 of the 100, is that correct?

Mr. WEINBERG. That's correct.

Mr. NEAL. Have you talked to them lately about it?

Mr. WEINBERG. All the time.

Mr. NEAL. What do they say?

Mr. WEINBERG. They don't give me an answer. They're giving me the con job now.

Mr. NEAL. So, in your judgment, the FBI still owes you $50,000?

Mr. WEINBERG. In my judgment, I believe it. When I get it, that's another thing.

Senator MATHIAS. Mr. Weinberg, do you have any other claims against the U.S. Government besides this $50,000?

Mr. WEINBERG. I haven't even got a claim against the 50. If they don't want to pay, there's nothing I can do to get it.

Senator MATHIAS. So, you don't feel the 50 is legally owed to you? You'd like to have it, but it's not a legal debt?

Mr. WEINBERG. When you deal with the FBI, they don't owe [232] you anything. As we say, it's on a "come bet."

Senator MATHIAS. And you're owed nothing else by the Government?

Mr. WEINBERG. No.

Senator MATHIAS. Senator Huddleston?

Senator HUDDLESTON. This may have been covered at a time when I was not here. But in the case of Members of Congress who were suggested as potential victims, was there any effort on your part to make any determination of your own independently as to whether or not these individuals, in fact, would be willing or inclined to be willing to accept this kind of a proposition?

Mr. WEINBERG. It wasn't up to me to make that decision. All I did—my job was if they say, "Set the day up to bring them in," I would call the middle guy up and say, all right, it was arranged and do it such and such a date. It wasn't for me to say to Tony or John Good, "I don't believe this guy."

Like I said, most of the people—the only guy's track record I ever had doubt was Silvestri's.

Senator HUDDLESTON. Was there, to your knowlege, at the time any checking or investigation made by members of the FBI as to———

Mr. WEINBERG. To answer that truthfully, I learned this later on that they did check. I heard this. I don't know how true it is.

[233] Senator HUDDLESTON. Did you learn this after the end of Abscam?

Mr. WEINBERG. After the end of Abscam, I heard that they had certain allegations against certain people that came in; that they were on the take.

Senator HUDDLESTON. And they checked on the specific individual to find out if there was anything in his record or any legitimate reason for believing that they might be interested?

Mr. WEINBERG. I heard this. How true it is, I don't know.

Senator HUDDLESTON. I see. Thank you, Mr. Chairman.

Senator MATHIAS. Senator Rudman?

Senator RUDMAN. When was the last time you received a regular check from the FBI? Was that March of 1980 what?

Mr. WEINBERG. March or April of 1982.

Senator RUDMAN. Of 1982, this year?

Mr. WEINBERG. Yes. I haven't seen a nickel—except expenses, you know, that came up, I haven't received a nickel from them.

Senator RUDMAN. And where have you been living for the past 6 or 8 months?

Mr. WEINBERG. Where I always lived.

Senator RUDMAN. Well, I'd like you to tell me. I don't know where you live, Mr. Weinberg.

[234] Mr. WEINBERG. I don't like to give my address out.

Senator RUDMAN. I didn't ask for the address.

Mr. WEINBERG. I live in Florida.

Senator RUDMAN. You live in Florida. And what have you been doing for a living?

Mr. WEINBERG. Nothing right now.

Senator RUDMAN. You have not been employed?

Mr. WEINBERG. No; because No. 1, I got knocked out of the box. I was working with somebody and due to the problem with my ex-wife, blood work got into the picture. I got knocked out of the box on a job. I've been called up on and off every month or so. I have to come up here, and I've been complaining to the FBI that they got to do something—either get me a job down there or pay me for coming up.

Senator **Rudman**. I understand that you have some ideas of your own as to how the FBI might improve undercover operations.

Mr. **Weinberg**. Well, I mean I have a few ideas of my own, if it was ever done again, that I would do.

Senator **Rudman**. Well, why don't you tell the committee those ideas? We might just as well wind up with that.

Mr. **Weinberg**. One thing is that the telephone that was being used for all the calls—I would have a permanent tape on it. I would definitely have the tapes logged so that we wouldn't have to go through all this aggravation. And that [235] would be the two ideas to do, because the tapes are the biggest problems. I don't believe the FBI ever had a case with so many tapes, and I personally think they did a fantastic job on what we had to work with.

You got to remember we worked with a shoestring operation from the time they got funded until they start giving us money. I mean, even the machine they used to televise somebody was a mickey-mouse machine. It was put in the file cabinet. You hit the cabinet and the damned thing fell down. All they got a picture of was the file cabinet.

Senator **Rudman**. Mr. Weinberg, if the Bureau asked you again to work——

Mr. **Weinberg**. No, no way.

Senator **Rudman**. That's one answer I expected, Mr. Chairman.

Senator **Huddleston**. Let me ask you one more.

Senator **Mathias**. Senator Huddleston?

Senator **Huddleston**. In this entire operation, did you ever have a feeling that anybody was being mistreated—any person was being led into something that he may not ordinarily want to be involved in, and was being, if not trapped, being enticed into something that, had not the opportunity been presented to him, he may never have strayed in that way?

Mr. **Weinberg**. Senator, in this operation, the people that were caught—and I have all respect for the Senate and [236] the Congress, all right?

Senator **Huddleston**. Yes.

Mr. **Weinberg**. These people were guilty. I mean, it was greed.

Senator **Huddleston**. That's not really the question.

Mr. **Weinberg**. We didn't need anyone to stray. That door opens both ways. They could have walked out anytime they want. No one held a gun to their head. One thing you got to understand. When you run what we call a store operation, buying goods that are being stolen from the neighborhood, you know you can yell entrapment there, too. You can say, "If I didn't know where to sell them, I wouldn't have brought them here." I mean, they had a place to sell them, so they stole them. This is the same type operation.

The average person steals something and he don't know where to unload it. You know, it's one thing to steal; the other thing is unloading it and finding a fence. So, when you have a storefront operation, they can scream the same thing and say--

Senator **Huddleston**. But it's a little bit different. In other words, you're dealing there with a crime that has already been committed. Somebody has stolen something and you're giving them an opportunity to get rid of it. Here, the crime had not been committed until you and your associates set up the scenario and actually designed the crime.

[237] Mr. **Weinberg**. Let me explain something, Senator. You say that there's a difference. There's not much difference. I know a lot of people that stole stuff to sell to a storefront operation.

Senator **Huddleston**. They would not have otherwise stolen it?

Mr. **Weinberg**. They wouldn't have stolen it if they didn't know where to sell it.

Senator **Huddleston**. Well, that's a good point and a good comment on that kind of operation. But the question is whether——

Mr. **Weinberg**. I'm not a lawyer and I don't know the law.

Senator **Huddleston**. I'm not either.

Mr. **Weinberg**. I think that the FBI—and I'm no great lover of the FBI—they did, under the circumstances, a fantastic operation, all right? What we had to work with in the beginning—no one expected this to turn out the way it did. I think if I knew what was going to turn out, I would have ran right away.

It just happened. It was just pure, dumb luck.

Senator **Huddleston**. Lucky or unlucky?

Mr. **Weinberg**. There was no great detective work. We were just extremely lucky that we got really greedy people that came in first. I believe the first Congressman that came in—we were more scared than he was. So, like I say, it [238] was a lot or pure, dumb luck that we did what we did.

Senator **Mathias**. The final stroke of that luck was to bring us all together today. [Laughter.]

On that note, the committee stands adjourned, subject to the call of the Chair.

Mr. **Weinberg**. Thank you very much.

[Whereupon, at 4:35 p.m., the committee was adjourned, subject to the call of the Chair.]

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

TUESDAY, SEPTEMBER 21, 1982

U.S. SENATE,
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS
OF THE DEPARTMENT OF JUSTICE,
Washington, D.C.

The committee met, pursuant to notice, at 2:15 p.m., in room 457, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias and Huddleston.

Staff present: Malcolm F. Wheeler, deputy counsel.

Senator MATHIAS. The committee will come to order.

As those of you who are familiar with the terms of Senate Resolution 350 know, the mandate of this committee is to look at undercover operations conducted by agencies of the Government and within the purview of the Department of Justice. We are not limited to discussion of Abscam, although that has been the focus of the recent hearings before the committee. But today, we look to the Federal Bureau of Investigation for some description of other kinds of undercover operations—Labou, Lobster, Frontload. We look to the Drug Enforcement Administration for some [2] discussion of DEA undercover policy, and a spokesman for the Immigration and Naturalization Service to discuss undercover policies in that agency.

Our first witnesses will be from the Federal Bureau of Investigation, and we will ask them to proceed.

Perhaps you could identify each witness at the table for the benefit of the reporter.

STATEMENT OF A PANEL, INCLUDING: OLIVER B. REVELL, ASSISTANT DIRECTOR, CRIMINAL INVESTIGATIVE DIVISION, FBI; RICHARD D. SCHWEIN, ASSISTANT SPECIAL AGENT IN CHARGE, CLEVELAND DIVISION; J. HARPER WILSON, UNIT CHIEF, UNIFORM CRIME REPORTING SECTION; JAMES W. NELSON, UNIT CHIEF, ORGANIZED CRIME SECTION, CRIMINAL INVESTIGATIVE DIVISION; AND BOB A. RICKS, CHIEF COUNSEL, DRUG ENFORCEMENT ADMINISTRATION

Mr. REVELL. With me today are Mr. Richard Schwein, Mr. Jim Nelson, Mr. Bob Ricks, and Mr. Harper Wilson.

At this time, I would like to proceed with my statement.

Senator MATHIAS. Please do.

Mr. REVELL. Mr. Chairman and members of the committee, my associates and I appear before you today in response to your request for testimony concerning four undercover FBI operations. You asked us to discuss Buyin, Frontload, Labou, and [3] another case of our choosing, and we selected Lobster.

Discussing these four operations should be informative. They illustrate the undercover technique at work in public corruption investigations and those striking at organized crime, in highly complex settings and those less complicated, in fraud cases and those involving thefts. They portray outstanding successes and instances in which the result was not what we anticipated. Finally, they provide examples of superb cooperation from local and State law enforcement agencies and private citizens.

The four special agents with me are J. Harper Wilson, James W. Nelson, Bob A. Ricks, and Richard D. Schwein. Mr. Wilson, to my far left, is a unit chief in the Uniform Crime Reporting Section. In a previous assignment in the White-Collar Crimes Section of the Criminal Investigative Division he was the headquarters supervisor for the Buyin operation during most of that case.

Mr. Nelson, to my immediate left, serves as a unit chief in the Organized Crime Section of the Criminal Investigative Division. He was the headquarters supervisor of Frontload during the entire operation.

Mr. Ricks, to my immediate left, is the chief counsel, Drug Enforcement Administration. However, during Labou, he was assigned to the FBI's Legal Counsel Division. His responsibilities included most of the legal and procedural [4] matters involved in the operation of the construction company. He later became the field supervisor of the operation in our Washington field office, where he had direct supervisory responsibilities over Labou and other investigations.

Mr. Schwein is the assistant special agent in charge of our Cleveland division. He was assigned to the Personal and Property Crimes Section of the Criminal Investigative Division, and in that capacity, he served as the headquarters supervisor for Lobster during most of that investigation.

At this time, I would like to present sketches of these four cases.

First, Buyin. Buyin began in July 1978, when an undercover Washington State Police officer developed information that a city official allegedly was accepting bribes to permit illegal gambling to operate openly and to support the enactment of legislation by the State legislature to legalize gambling. In addition, a local police informant reported that this same public official had received illegally the proceeds of a $20,000 loan acquired by a cardroom owner.

This information prompted an FBI undercover investigation. Obviously, were it not for the excellent cooperation exhibited by State and local authorities in the State of Washington, Buyin would never have occurred at all. The special agent in charge of our Seattle division initially approved the operation. As the need for funding increased, Buyin was presented to the [5] undercover review committee, which recommended its approval by the Assistant Director of the Criminal Investigative Division. FBI Headquarters authorities approved each payment to the subjects.

Our undercover agent represented himself to be an employee of a California enterprise wishing to invest money in a Washington State cardroom, with the understanding that casino gambling and slot machines eventually would be legalized. Soon, the agent came across a gambling lobbyist, who said he was in a position to introduce him to the speaker of the house and the senate majority leader in the Washington State Legislature. The lobbyist explained that these two legislators would be willing to introduce and support the desired gambling legislation if they could benefit personally.

The Seattle office then proposed, and FBI Headquarters approved, changing the focus of the operation to the lobbyist and the two State legislators. All three individuals told the undercover agent he would have to be checked out prior to any discussions of payoffs or other arrangements. We were able to use an existing undercover operation in a neighboring State to support the Buyin scenario. It featured a second undercover agent posing as a principal. The three subjects and the first undercover agent made several trips out of State to negotiate with the second undercover agent. While all of this was transpiring, the lobbyist asked for and received $1,000 **[6]** per month as a "consulting fee."

In exchange for their introducing and supporting the gambling legislation, the three subjects said they wanted 18 percent of the next profit, not only from the anticipated gambling revenues, but also from the sale of slot machines within the State. As a part of the deal, legislation would be drafted to give the undercover agents a competitive advantage in the selling of slot machines.

They also discussed the best way to launder the payoffs. At one point, they planned a trip to the Grand Cayman Islands in the British West Indies to establish a "paper corporation" which would serve a laundering function, but one of the subjects could not travel there and thus, the trip was scrapped.

As he requested, the Speaker of the House was paid $5,000 described as a campaign contribution.

The allegations against the city official were never proven, and the undercover phase of Buyin ended 16 months after it began when a Federal grand jury indicted the three major subjects. Following a 2-month trial, they were found guilty of violating multiple counts of Racketeer Influenced and Corrupt Organizations, Hobbs Act, extortion, interstate transportation in aid of racketeering, bribery, mail fraud, and conspiracy statutes. All three subjects were sentenced to 5 years' imprisonment.

The next case is Frontload.

[7] Norman Howard, an informant, told us about New York and New Jersey organized crime figures engaging in fraud in the construction business. Our field offices in these areas corroborated organized crime involvement in construction projects financed by the Department of Housing and Urban Development. With the consent of Howard, who had provided reliable information in the past in a number of major cases, we monitored some of his conversations with the hoodlums. We recorded confirmation of their involvement and references to organized crime control of HUD projects and payoffs to unions.

With this information in hand, we realized that the undercover technique clearly afforded the best chance for a successful investigation. Thus an undercover operation was proposed to FBI Headquarters on February 24, 1978, and approved by the Associated Director in late March. The plan was to put two undercover agents in business through an insurance bonding company capable of providing bid, payment, and performance bonds for construction projects. Besides collecting evidence of fraud and labor racketeering violations, we wanted to see for ourselves the degree and scope of organized crime control of the construction projects and related public corruption.

Our agents and Norman Howard met in the New York on March 1, 1978, with Maurice Greenberg, president of the American International Group, parent company of the New Hampshire Insurance Co. At the meeting, our agents described the [8] project to Mr. Greenberg, and he agreed to help establish the agents and Howard in the bonding business.

Mr. Greenberg suggested using NHIC because it was the only one of the AIG's subsidiaries that had written performance bonds, although NHIC had left the bonding field a number of years earlier.

Carl Barton, president of NHIC, traveled to New York and met with our agents and Howard. It was agreed that the project would be structured so Howard, through his Illinois company, Northfield Associates, would be appointed a bonding agent of NHIC, and the undercover agents would play the role of marketing representatives of NHIC. NHIC would not profit from this agreement; responsible citizenship was its motive. Mr. Barton stated that he understood all bonds would be formally approved by NHIC before they were written, and our agents concurred.

Although the concept of the operation was approved in late March 1978, there were continuing negotiations between the FBI and NHIC regarding liability and indemnity. What we did not realize at this time was that an NHIC official, acting in good faith, had already provided to Norman Howard a corporate seal and all the necessary forms, documents, and power of attorney to write bonds unilaterally. Howard, without our knowledge, proceeded to do just that, and by the end of May had written performance bonds totalling several millions of dollars. [9] NHIC disclaimed these bonds, and civil suits followed.

Because NHIC had agreed to assist the FBI out of a sense of civic duty, former Attorney General Griffin Bell decided that the United States should protect NHIC from financial losses arising out of Frontload. Department of Justice attorneys were substituted as counsel of record in all civil suits. Many of these cases were dismissed, and the government settled others.

When our informants break the law, we take action. Howard was convicted of similar frauds in an unrelated matter and sent to jail.

We paid a price for Frontload. The Government's potential liability at one point amounted to millions of dollars. But with most of the suits settled or dismissed, the actual cost to the Government has totaled about $825,000.

There was some good news along with the bad. A major subject of this investigation was convicted of conspiracy charges and agreed to testify against others. Aided by his testimony, we were able to obtain 12 convictions against the mayor, the deputy chief of police, and school board president of Union City, N.J., in addition to other public officials and organized crime figures.

Next, we turn to Labou.

Labou focused on bid-rigging, bonding irregularities, and other aspects of alleged construction fraud in the [10] Washington, D.C., area. It was predicated on reports from several FBI informants, and a review of the files of our Washington field office. An independent businessman, Richard Muffoletto, agreed to act as a cooperating witness. Mr. Muffoletto had a good track record. He had assisted us with some of our cases in New York against prominent officials involved with kickbacks in construction contracts.

When the Director approved Labou in August 1978, the project was the most complex and expensive operation in our history. Funds were budgeted for an elaborate facade, including construction offices, and for renovating a house in Georgetown and another on W Street. Although Mr. Muffoletto was to have been the sole owner of the company, his inability to obtain bonding on a short-term basis necessitated the Bureau's becoming a coindemnitor of all projects awarded. This change in status resulted in the Bureau's assuming ownership of the construction company.

Because of the uniqueness of the operation and our inexperience with the formation of construction companies, we made some early mistakes in controlling overhead. As soon as was we learned that the company was spending too much money, we took corrective action. We replaced some of the personnel involved with agents from Headquarters and other field divisions. The new project manager presented regular briefings to the Criminal Undercover Operations Review Committee.

[11] This was the Bureau's first attempt to manage a legitimate business enterprise of this magnitude. When problems arose, we took decisive action. Whenever significant legal issues arose or changes in the status occurred, we consulted with the Department of Justice.

The company successfully completed four major construction projects and was sold to Mr. Muffoletto on June 30, 1980. It remains an ongoing business enterprise at this time.

In September 1979, we decided that operation Abscam could be enhanced by using the residence on W Street as a meeting place with many of the subjects of that investigation. As readily can be imagined, activity at W Street oftentimes became quite hectic with meetings alternating between subjects of the Abscam investigation and the Labou operation. This sharing of the W Street premises was the primary connection between the two cases.

Labou uncovered a corrupt major contractor who had bribed the bonding manager of Allstate Insurance Co. The contractor was initiating a major "bust out" scheme in which a certified public accountant would furnish fraudulent financial statements so the contractor could obtain a greater bonding line. The bonding manager, as a result of the bribes paid to him, would issue performance and payment bonds. The contractor intended to build up his work on hand substantially and siphon off money from his business by transferring the [12] funds to a consulting company in the Bahamas which would make a transfer of funds to accounts in Liechtenstein. This contractor was no novice. A similar bust-out operation of his caused another insurance company to lose an estimated $10 million.

The last case I wish to cite is Lobster.

In 1977, organized crime groups and others plagued New England with hijackings and thefts of entire tractor trailerloads of highly valuable cargo. Employees of the victim companies arranged most of the crimes. Frequently, all the details for disposing of the stolen property were ironed out ahead of time.

The Massachusetts State Police and the FBI decided to attack the problem through operation Lobster. Funded by the Law Enforcement Assistance Administration with about $500,000, this joint State-Federal operation provides a textbook example of how successful the undercover technique can be.

At first, we planned making a warehouse available to the thieves where they could store the stolen property and arrange for its sale and delivery to fences. Special agents and [13] State police officers would stake out the premises and try to identify the criminals. We anticipated collecting enough evidence to obtain court-ordered electronic surveillance of the building and the telephones.

There was sufficient flexibility in the plan to permit using an undercover agent if the opportunity presented itself. When it did, we changed the original scenario and placed an undercover agent in the warehouse. Operating as a salvage dealer in the warehouse, he controlled the site and thus facilitated consensual monitoring. When the thieves brought their stolen merchandise to the warehouse to sell to the undercover agent, we recorded the entire transaction on video and audio tape.

Still working closely together, Massachusetts State Police officers and FBI agents recovered over $3 million in stolen property and arrested more than two dozen subjects. Six La Cosa Nostra associates, a like number of the notorious Winter Hill gang, and a host of others—57 defendants in all—were convicted in Federal and State courts.

The impact on the cartage industry in New England was just as dramatic. There were 67 hijackings and thefts—about 4 a month—of tractor trailerloads from March 1977 to June 1978. From March 1979 through April 1980, there were but six.

Mr. Chairman, I had the pleasure of appearing before the [14] committee last July 20, and I testified that undercover operations are lawful, they are indispensable, and they are highly effective. These four cases support those conclusions.

I know of no other way in which we could have investigated the activity in these cases with anywhere near the success we achieved by using the undercover technique. It may be observed that we were able to apply the technique to a broad range of criminal activity. The operations were not limited to cases involving public corruption. Lobster illustrates it need not be reserved for consensual crimes.

When I was with you last July, we discussed at length the controls the FBI has on undercover operations and payments of bribes. While controls can and do minimize the potential for errors, they cannot be expected to preclude them. The true test, it seems to me, is what to do when mistakes occur. As you have seen, what we did was take corrective action. We developed policy and refined procedures to avoid recurrences.

Finally, these four investigations provide an insight into the manner in which we have progressed in the last 4 years. We have put our experience to good use, and I am confident that Buyin, Frontload, Labou, and Lobster foretell even greater success in the future.

Senator MATHIAS. Thank you very much, Mr. Revell. I see by the clock in the hearing room that there is a rollcall vote now in progress in the Senate, presumably on [15] the subject of cloture. I think perhaps it would be the most orderly thing for us to take a brief recess, Senator Huddleston and I will go vote, and we will return immediately and undertake to discuss this at a little more length with you.

The committee will stand in recess for approximately 10 minutes.

[Short recess.]

Senator MATHIAS. The committee will come to order. Mr. Revell, let us start with Buyin. Now, as I understand your description of Buyin, the project was presented to the Undercover Review Committee, but I am not so sure at what time it was presented. And, since what we are trying to do is understand the procedures, at what stage did Buyin come to the attention of the Review Committee?

Mr. REVELL. Senator as I indicated, it started off as a result of, in essence, a referral from State authorities, aimed at a local corruption situation. It went to the committee because of a change in focus, and an upgrading from what we call a category 2 to a category 1 case after we received information that two high officials in the State legislature were, in essence, willing to sell their offices in return for bribes.

Mr. Harper Wilson was the supervisor, and I think he could give you additional detail in that regard.

[16] Mr. WILSON. Senator, to give you just a bit of background, Seattle—the division which operated Buyin—in July 1978, asked for Bureau permission to run the undercover operation, aimed at the local official. We at that time advised them that they did not really need Bureau approval to operate the very limited undercover operation that they were proposing. Almost immediately they determined, after meeting with the lobbyist, that the local official they were looking at was not in the position to do what they thought, or what the allegations indicated he said he could do. In September, the FBI Seattle division requested $8,500 to continue the operation toward the allegations of the State officials. FBI Headquarters looked at their request, felt it did not have the merit that it needed that was necessary to target the investigation toward the State officials. It was not until December 1978 that they were able to substantiate the allegations to the point that we felt comfortable in presenting the matter to the Undercover Review Committee. It was ultimately presented on January 4, 1979, and approved.

Senator MATHIAS. But shouldn't there have been an original presentation to the committee at the very outset because public officials were involved?

Mr. REVELL. No, sir. Presentation is required when the undercover operation is not of a transient nature. If it is within the **[17]** authority of the special agent in charge to approve—in other words, the level of official and the level of bribe—then it can, in fact, be approved at the SAC level. In our previous testimony, of course, we discussed that the bribery guidelines go hand in hand with the undercover and also the informant guidelines; they are all operated in conjunction with each other. We can have a one-time contact, either by an informant or by an undercover agent, with an official or with a public employee about which we have received information that they were involved in corrupt activities and would be interested in accepting a bribe for illegal purposes, and carry that out at the level of the SAC only with a postnotification requirement to FBI Headquarters.

Senator MATHIAS. You mentioned the fact that there was a change in focus and that that occurred when the two State legislatures were implicated; is that correct?

Mr. REVELL. That is correct.

Senator MATHIAS. What was the original focus?

Mr. REVELL. Well, the original focus was the information developed by the State police, that a city official could assist them in running cardrooms in return for kickbacks.

Senator MATHIAS. So that what you define as a change in focus was the shift from the investigation of an allegedly corrupt municipal official to that of the investigation of an allegedly corrupt State legislature.

[18] Mr. REVELL. And also, the protection of a local gambling operation as opposed to the potential of introduction of legislation in the State legislature.

Senator MATHIAS. So it was that particular mix of personalities and events that constitute a change of focus, by your definition?

Mr. REVELL. I believe that is correct.

Mr. Wilson?

Mr. WILSON. That is basically correct. The change was from the local official to the State officials.

Senator MATHIAS. Does the Undercover Review Committee get involved in this change of focus?

Mr. WILSON. Yes. There also was an escalation as well as a change of focus; the escalation to the higher level official. That and the longer term operation required it to go to the committee because it was at the level that would require review by the committee and the approval by at least the Assistant Director.

Senator MATHIAS. If you were going to try to graph these events, then, you would show lateral motion and vertical motion happening simultaneously?

Mr. WILSON. Lateral motion, and then we hit both vertical **[19]** and lateral, yes, because in essence, several things occurred which required it to escalate from the level 2 to the level 1 operation.

Senator MATHIAS. In this case, the gambling lobbyist was the corrupt middleman; right?

Mr. REVELL. [Nodding head.]

Senator MATHIAS. Was there any effort to corroborate the allegations he made that the State legislatures were on the take?

Mr. **Wilson**. That is one of the problems we had initially, Senator, in sending the proposal to the Undercover Review Committee. We made some initial meetings with the two State legislators and in December 1978, the Speaker of the House of Representatives of the Washington State Legislature told us that he would be willing to discuss his influence for a price. At that point, we presented the proposal to the committee. That was the turning point, really. In fact, he made the statement that, "You don't buy people anymore; you just rent them."

If I could add one other thing, in 1978, this was really the genesis of the FBI's undercover operations in this area, and one of the things that prompted us, or required us, to present the proposal to the committee was the amount of money that was being requested by the Seattle division. That was a factor in the timing of the presentation.

Senator **Mathias**. In these hearings, of course, we have talked about the weight that you ought to give to the [20] allegations by a corrupt middleman; should you believe him, why should you believe him. And one of the tests or one of the measures of credibility has been referred to as the track record. Did this middleman have a track record? Was there some reason that you should believe that he had any basis for the allegations that he had made?

Mr. **Wilson**. I think it is interesting to note, Senator, that the middleman was the roommate of one of the State legislators who was ultimately the subject, the Speaker of the House of Representatives, a close personal friend.

Senator **Mathias**. But was that the only track record there, or——

Mr. **Wilson**. We had no record of criminality on the part of either subject.

Senator **Mathias**. But what about the middleman, what was his track record?

Mr. **Wilson**. No criminal record.

Mr. **Revell**. He was a known lobbyist. In other words, he had a reputation in the State as being a lobbyist for various causes. He could be hired to exert influence, both legitimately, I presume, as well as the other kind——

Senator **Mathias**. For or against.

Mr. **Revell** [continuing]. That is correct—and he was rather effective in this regard.

Senator **Mathias**. But you had had no experience; he had [21] no track record with you.

Mr. **Revell**. That is correct.

Senator **Mathias**. Now, you have testified that there was a conviction for interstate transportation in the aid of racketeering. Was the interstate travel only the trip across the State line to meet the FBI undercover agent, or was there other interstate travel involved? Was that the only crossing of a State line?

Mr. **Revell**. I would have to defer to Mr. Wilson, but to my knowledge, the charges were based upon the trips of these individuals in conjunction with the meeting of the second FBI undercover agent who was operating an undercover enterprise in California. And I do not know of any other travel in the charge.

Senator **Mathias**. Did you have any corrupt cooperating individuals—somebody like Mel Weinberg in the Abscam case?

Mr. **Revell**. No, sir. In this instance, the case came to us from the original allegation, which was not proven. It led us into contact directly between the undercover agent and the middleman, the lobbyist. He led us directly to the two State legislators. There were numerous meetings between our undercover agent, the lobbyist, and the legislators before there was a determination to proceed to a second FBI undercover agent, who was in a situation with his scenario which gave credence to an interest in this type of activity. Therefore, [22] in essence, the two undercover agents replaced the agent—the Tony Amoroso/Mel Weinberg type of situation.

Senator **Mathias**. What about the technologies that were involved? Were there any consensual recordings?

Mr. **Wilson**. Yes, sir. That was the only type of technology that was used, was——

Senator **Mathias**. Audio or video?

Mr. **Wilson**. Only audio.

Senator **Mathias**. And what were they—transmitters that were carried on the body, or how did you——

Mr. **Revell**. When we had the premises under our control, we would have fixed audio monitoring devices. When it was a mobile situation, then the undercover agent would wear a recording device.

Senator **Mathias**. What about nonconsensual surveillance?

Mr. **Wilson**. There was none.

Mr. **Revell**. Our agents participated in all the meetings, so they were all consensual.

Senator **Mathias**. Senator Huddleston?

Senator **Huddleston**. Mr. Revell, of the four operations that you have discussed, two of them were initiated by information supplied by law enforcement agencies—Buyin by the Washington State Police; Lobster by the Massachusetts State Police, along with the FBI, and they were probably the most successful of the four. Frontload was initiated by information [23] from an informant, who turned out to be a crook. It was a near disaster, although some convictions did result, expensive to the country. Labou was also initiated by informants.

Starting with Frontload, was it the understanding of the FBI that Mr. Howard was a crook, or was it expected that he was a legitimate businessman?

Mr. **Revell**. Senator, Mr. Nelson will answer this, except let me say that Mr. Howard was known to us. He was a former police officer who had been convicted of criminal activities. He had also cooperated with us in other cases in the past and had provided reliable information in the past to the point where he was considered to be one, an informant, and two, to be a reliable informant, even though he had engaged in both illegal, and prior to that, legal activities.

Senator **Huddleston**. So you knew the potential was there, that he might.

Mr. **Revell**. Yes, sir.

Senator **Huddleston**. I would be glad to hear from Mr. Nelson.

Mr. **Nelson**. Senator Huddleston, we began the investigation based upon, as you noted, the informant information. However, we did ask our Newark and New York offices to evaluate that information in its entirety.

Senator **Huddleston**. That was before the operation began?

Mr. **Nelson**. Before the operation began, we asked them to [24] conduct their own intelligence investigation, review the files, which they did.

They both came back, both cur New York and Newark offices, and substantiated almost in its entirety the information given by the informant, and heartily endorsed this proposal as, one, being necessary, and two, being viable.

We also checked with another office that had operated with the informant over a period of years, and they came back, evaluated his performance, said he had been productive, he had been reliable in the past—yes, he had previous law enforcement difficulties; he had been convicted, but they recommended the use of that informant, also.

Senator **Huddleston**. So you checked on both the reliability of the information, to find out that there was indeed a possibility of illegal activity going on in this particular area.

Mr. **Nelson**. Yes, Senator, we did.

Senator **Huddleston**. And you checked on the veracity of what Mr. Howard was telling you.

Now, in the case of the Labou, you just mentioned "FBI informants." Were there several of them?

Mr. **Revell**. Yes. It was a cumulative search for information relating to a particular concern that was occurring within the greater Washington area. Mr. Ricks is the agent who was primarily involved in that, and I think he can respond, Senator.

[25] Senator **Huddleston**. Were these informants also ones with criminal records, or were some of them supposedly legitimate business people?

Mr. **Ricks**. First, if I might, Senator Huddleston, I would like to correct one thing that you said. You indicated that the Labou operation was started as the result of an informant. That really was not the case. What happened was the Washington Field Office on their own initiative set about to find out what the prevailing crime problem was in the area. They contacted, as we said, sources. Now, those sources were, in most cases, legitimate business people, people we have had contact with in the past. They also contacted the U.S. attorney's office to see what the prevailing criminal problem—what major white-collar crime problem did we have. This was a new priority in the FBI, so they were seeking to address that problem, trying to determine what the major white-collar crime problem was, and the source in the case, Muffoletto, was only brought into the operation after we went out and sought his assistance. He did not initiate this operation. We went to him and asked for his assistance.

The other sources you refer to, the vast majority were legitimate business people.

Senator **Huddleston**. Well, I was quoting Mr. Revell's statement, when he said that it was predicated on reports from several FBI informants and a review of the files from the [26] Washington office.

Mr. **Ricks**. That is correct.

Senator HUDDLESTON. So, some of these informants were legitimate businessmen.

Mr. RICKS. Yes, sir.

Senator HUDDLESTON. Well, in this case, then, it seems that you were—and this may be a little different, too, from some of the other operations—I an trying to find out which comes first. Do you make a determination or do you get some information that there is a crime problem in a certain area, and then set about how to do something about it——

Mr. REVELL. Both, Senator.

Senator HUDDLESTON. If I understand what you just said, Mr. Ricks, you just said, "Well, here is Washington. There is bound to be some criminal activity going on here. Let us search around and see if we can find out what it is."

Mr. RICKS. Well, what they attempted to do was exactly what any resourceful FBI agent should do, and that is to find out what your criminal problem is. It was not, "Let us open up a fishing expedition and throw out a net and see what we might catch." It was going through the files, trying to address problems, complaints, talking to informed people to determine what really was the major white-collar crime problem in the area. The white-collar crime in many cases was new to the FBI. We had addressed it on the surface, but never had we **[27]** attempted to penetrate many of the areas of white-collar crime previously.

Mr. REVELL. Particularly, we are talking, Senator, in the area of consensual crimes, where the only victims would be the Government, in paying exorbitant prices for contracts, because both the contractor and the bidder are upping the price to pay for the kickback. About the only way you are going to deal with those is to get some inside information or to construct a scenario based upon general intelligence that this is an ongoing practice. We have had other cases where our antennae picked up some vibrations, and we set about to follow those vibrations, and in doing so, we established a scenario to test that intelligence, and once we found that it was accurate, we proceeded.

Senator HUDDLESTON. I understand, but I think what we are really getting to here is that you can operate in at least one of two ways. You can deal with crime that is obvious, such as the Lobster case, where tractor trailers were disappearing and being stolen; obviously, crimes were being committed, and you set about on how to deal with it. Or you can, on your own initiative or on the initiative of an agent assigned to a particular area, try to make a determination as to what crime may be existing that you do not know about at the present time, or which is not apparent, and then you can proceed in whatever way you feel most effective to deal with that. In these cases, it was **[28]** through an undercover operation. Does this go on other places in the country, where you are actually—I recall one of the guidelines, and I do not remember it exactly, but it had something to do with the fact that you had to determine that you were dealing in an area where there was a problem of criminal activity. Don't the guidelines say something to that effect?

Mr. REVELL. Well, in establishing an undercover operation, you have to do several things. In the first place, you can set up an undercover operation without a specific named individual as the target. You can target a particular type of enterprise. We had a case similar to that in Oklahoma, with the case we called, Corcom, which was set up to determine if in fact the information we had received about widespread corrupt practices amongst vendors and county commissioner was true. We established an operation; we determined through our investigation in a covert fashion that it was true; we obtained a cooperating witness who happened to be a part of the ongoing operations, and we successfully investigated the entire operation throughout the State.

We did not have a named individual when we started that operation. We had intelligence of a widespread problem. So we set it up on that basis.

On the other hand, you can have specific names. We can have a narcotics ring where we know the people involved, but we have been unable to prove the activities that they are [29] involved in. So we can target the named individuals and then develop information about the specific crimes.

Senator HUDDLESTON. I have been handed some research—I believe this relates to the guideline which says, "There must be a reasonable suspicion of a pattern of criminal activity in an area."

Mr. REVELL. Correct.

Senator HUDDLESTON. That is after you have already gathered a certain amount of information and made the determination as to whether you then proceed in an undercover method.

Mr. REVELL. That is correct.

Senator HUDDLESTON. Now, if you extrapolated what we have learned here in these four cases across the entire spectrum of undercover operations, is there any kind of lesson at all to be learned from whether or not chances of success, the chances of a good, clean type of undercover operation, are improved if it is instigated by information gathered from law enforcement officials, as opposed to information that comes from informants?

Mr. REVELL. No, sir; I think you have a dichotomy here with two cases on each side. Although the initial startup of Buyin did deal with State police, the specific targets were not involved with the State police. It was a natural evolution of [30] that case.

We have had many very successful, no-problem cases dealing with informants, and we have had unsuccessful cases dealing with intelligence or information from police agencies. I think in both instances you have to weigh very carefully the information; you have to corroborate it; you have to independently test it; and you have to learn from your mistakes. Now, obviously, in both Labou and Frontload, we initially, at least, bit off more than we could chew at that time. We think we learned a great deal from those two operations. Ultimately, we believe they were successful, and I think, even more importantly, they taught us institutionally how to deal with these major, significant problems.

Senator HUDDLESTON. I will yield now to counsel for his questions. I have some others, if he does not cover them.

Mr. WHEELER. Thank you, Senator.

I would like to go back for a moment, Mr. Revell, to one of Senator Mathias' questions, because it is my belief that you misspoke yourself, probably inadvertently, and in the way in which you did, it reflects one of the central problems that Mr. Neal and I focused on when you testified before us before. That has to do with the meaning of the guidelines.

You recall that that when you testified before, we talked about what the definition of a "public official" is under the undercover guidelines. And I thought you had testified, Mr. Revell, [31] that the term "public official" as used in the undercover guidelines does not include elected State officials. Isn't that correct?

Mr. REVELL. If you recall, we had some discussion about that. We have defined internally that State official does not include a State legislator.

Mr. WHEELER. Right.

Mr. REVELL. All right. That has nothing to do with the other factors, such as the amount of money involved, the long-term duration that would require a group 1. Now, a State Governor, and in my view, probably, the Speaker of the House or the President of the Senate would constitute public officials and would require the level of review that we are talking about.

Mr. WHEELER. That really makes the point very nicely. You say in your opinion, the Speaker of the House, who was one of the individuals in Buyin, and the other individual was the majority leader of the State senate, so the two most powerful State legislators in the State of Washington, and you tell us that in your opinion, those two individuals are probably public officials——

Mr. REVELL. As you recall, the guidelines simply say "public officials" and they do not define "official." Are we talking about any public employee, of which there are some 6 million, or are we talking about only elected officials? [32] You have elected officials at very low level, as well as high level. There are certain working definitions. We have advised the Attorney General that these are our working definitions, and since there are his guidelines, until he tells us that this is not acceptable, then, we are proceeding according to that definition.

Mr. WHEELER. Well, Mr. Revell, we have seen the letter of interpretation that you sent to the Attorney General. You even testified about that last time. And that letter does not state that the Speaker of the House or the majority leader of the State senate would be public officials.

Mr. REVELL. No; but they also do not say that FBI executives should not use their discretion and experience in determining when they review and approve cases at certain levels. In this case, those two officials were the subject of a Headquarters undercover review, and they were approved at the assistant director level, not only the undercover operation, but the payment of bribes, and so forth.

Mr. WHEELER. Mr. Wilson, are you the one who is the expert on Buyin?

Mr. WILSON. Yes.

Mr. WHEELER. What was it that went through your mind that caused you to think that the approval of the Undercover Operations Review Committee ought to be sought with respect to [33] these two individuals, and specifically, was it their positions, or was it the amount of money that was going to be involved, or was it the duration of the operation, or a combination of all of those?

Mr. **Wilson**. I think it is important to note, Mr. Wheeler, that the undercover guidelines that are in effect now were not in effect in 1978.

Mr. **Wheeler**. We understand that.

Mr. **Wilson**. The Seattle division had requested $8,500 to continue its operation. That and the fact that certain exemptions were necessary by the Attorney General—mainly, to put money into a bank account, caused this operation to have to go before the committee if it was to continue. Those factors really are the ones that caused it to go before the committee.

Mr. **Wheeler**. I have to tell you, Mr. Wilson, that my reading of the file—and I would like to state for the record, Senator, that the FBI has been as forthcoming in providing us with a massive number of documents to review in this case as they did in Abscam—in my review of the documents, Mr. Wilson, it appears to me that the reason that this was submitted to the committee was because of the dollars; namely, it exceeded the then $1,000 limitation on SAC-approved operations, and once you asked for a dollar amount exceeding that, it had to go to the committee in order for you to proceed. It had nothing [34] to do with the fact that it was State legislators who were involved. That seems to be what you are saying. Am I correct in my interpretation of your remarks?

Mr. **Wilson**. That was one of the factors, exactly. We also had this discussion previously, Mr. Wheeler, that the same official who approves the undercover operation, namely me, also approves the bribe payments. And in existence at this time was the requirement that, at the State legislator level, the assistant director must approve the bribe payments.

Mr. **Wheeler**. But there was no bribe payment offered to either of these individuals until very late in the operation; isn't that right?

Mr. **Wilson**. No, that is not——

Mr. **Wheeler**. An actual bribe, an offer of cash.

Mr. **Wilson**. That is not quite correct. There was a consultation fee paid to the gambling lobbyist early in the operation——

Mr. **Wheeler**. But that was for him to spread around to unnamed individuals in the beginning. The initial payment made to that gentleman was made for him to "spread around"—I believe that is an exact quote—to unnamed individuals, basically at his discretion, and he was hired as a consultant for that purpose; isn't that right?

Mr. **Wilson**. That was what he stated to us—the undercover agent—that he intended to do with the money; correct.

[35] Mr. **Wheeler**. Right, exactly.

Now, Mr. Wilson, one, what may seem to be a random question, but I think you know it has some significance for us. Mr. Amoroso's name appears on some of the early documents in Buyin, and that is in the State of Washington, and this is during the period when Mr. Amoroso was about to begin, or perhaps was already connected with, Abscam. And I was wondering if you could state for us what Mr. Amoroso's connection to Buyin was.

Mr. **Wilson**. I have no knowledge of Mr. Amoroso having any connection with Buyin. What documents are you referring to?

Mr. **Wheeler**. Some of the early documents in 1978 have copies being shown going to Mr. Amoroso. In fact, one of the documents contains his name in the——

Mr. **Revell**. Let me answer that, if I could.

Mr. **Wheeler**. Yes, sir.

Mr. **Revell**. At that time, Mr. Amoroso was a supervisor in our Organized Crime Section in FBI Headquarters. It had nothing to do with undercover operation. It had simply to do with coordination between White-Collar Crime and the Organized Crime Sections. He at that time had no undercover assignment.

Mr. **Wheeler**. Again, just to finish up this point, Mr. Revell, about the nature of the political official involved, the initial official involved in Buyin was the mayor of the **[**36**]** city of Vancouver, and it is my understanding that he would not be a "public official" within the terms of the current undercover guidelines; is that correct?

Mr. **Revell**. That is correct, yes.

Mr. **Wheeler**. Now, on Lobster—and again here, of course, the documentation that the FBI provided us was substantial—what I would like to do, in the interest of saving some time here, is to summarize for you, Mr. Revell, a number of administrative procedures and safeguards that we determined had been applied in Lobster, that we also determined did not appear in the documents of Abscam to have been applied in Abscam. And I would like to have you inform the committee as to why these procedures were followed in Lobster—and incidentally, several of these were followed in the other undercover operations, but were not followed in Abscam. And specifically, what I have in mind is, are there differences between a political corruption operation investigating alleged Congressional corruption, and a political corruption investigation involving State corruption, or, as in Lobster, a sting operation involving organized crime?

Let me just run through some of those differences. And let me say for the record, incidentally, that Operation Lobster, in terms of the documentation, was absolutely exemplary. I can think of no source of documentation that I would have liked to see in the file that we did not find. And **[**37**]** in part, that is what makes it such a dramatic comparison, especially to Abscam. In the early part of the Lobster operation, Boston SAC sent a teletype to headquarters saying,

> Since submission of the initial plans for this operation, as a result of additional avenues of approach being developed, Boston intends on expanding the scope of the operation to include other targets from other cities. Boston also intends, contrary to initial plan, to make greater utilization of* * *

And then it defined a specific undercover technique, and basically, was seeking approval from FBI Headquarters for this expansion to additional targets, that would also involve expansion to additional cities, and expansion of the use of a particular undercover technique.

Now, this was in June 1977 that this teletype occurred, and teletypes like this appear at various points throughout the Lobster operation. So the point here is that in Lobster, at least, on a number of occasions, there were teletypes going to headquarters saying, We intend to expand the operation geographically, or in terms of the type of crime we are investigating, or in terms of the individuals we are looking at, and we want to you to be informed about it.

In Abscam, quite to the contrary, there was never such a teletype that we saw, or memorandum that we saw, that, for example, in October 1978, stated that the Brooklyn-Queens office had concluded that the investigation was no longer going [38] to pursue forged securities as it had originally. There was no teletype or other memorandum going to Headquarters from Brooklyn-Queens in October, November, or December 1978, stating that the operation was going to begin to turn to political corruption. There was no teletype or memorandum sent after July 26, 1979, for almost 3 full weeks, stating that the operation was going to turn to an investigation of Congressional corruption. And when new political names surfaced through the mouths of middlemen, no teletype or other communication, written, was directly sent to Headquarters, stating that these new possible targets arrived. The names did not surface, really, in Washington on documents until formal approval was requested for the offering of a bribe.

So one major difference that appears in the documents—and I realize that is all we are talking about; we are not talking about telephone conversations—was that the field office through the SAC seemed to have made an attempt regularly to inform Headquarters immediately upon any intention to expand the operation to new targets, to new geographic areas, or even to criminal activity. Second, in July, very early in the Lobster operation, Boston sent to the Director and to the Office of Legal Counsel of the FBI, a request for "legal guidance and recent court decisions which may affect entrapment and the sale of stolen goods." And the Office of Legal Counsel—I believe it might have even been Mr. Ricks, but I am [39] not sure—sent an extensive memorandum on entrapment and on current law in the area. No such documented request appears in the Abscam documents, and no transfer of such a document from the Office of Legal Counsel to Brooklyn-Queens appears in those documents.

One of my questions for you, therefore, is, is it customary, and should it be a regular procedure, in fact, in undercover operations to, at the very beginning when a new undercover operative arrives on the scene or when a new informant arrives on the scene, to provide the best current legal thinking on entrapment and related legal doctrine.

The third difference is that the SAC in Boston sent Headquarters in Washington a biweekly—that is, every other week—summary of the operation. The summary was extensive. It discussed uses of technical equipment, recoveries of stolen property, new people identified as possible targets in the prior 2 weeks, and developments regarding old targets in the prior 2 weeks. The question I have for you, of course, is no such biweekly report, no monthly report, no every other month report of that nature appeared in the Abscam files. Should they be; are they regularly, in fact, in the files of other undercover operations; or is this just a matter that is purely discretionary, and if not, should it be something that is required.

Fourth, a teletype from Boston to the Director as the [40] closing down of Lobster approached, said as follows:

> Boston desires extensive knowledge of possible problems that could be encountered concerning preparation of paperwork for trial, arrest procedures, handling of all evidence gathered, and press releases as well as press relations during the closing operations.

The FBI Headquarters granted that request and sent several agents and a strike force attorney to another field office that had had experience with the closing down of complex undercover operations, and in doing so stated: "These visits have proven highly beneficial in the past." Again, in Abscam, no such request was made on paper, and the documents do not reflect that any such visit occurred. My question here again is, should this type of visit be routinely done; should it be a matter of rigorous application in every, single undercover operation so that, for example, some of the leaks that occurred in Abscam perhaps might not have occurred?

In Operation Lobster, to give you an indication of the thoroughness of the documentation—as you know, there were fewer than 100 FD 302's, that is, FBI reports of conversations, in Abscam. In Lobster, on the other hand, in one 4-month period from April to August or September 1978, there were 292 302's; in the period from August 1978 to November 1978, there were 464 302's; and in the course of the operation, there were well over 1,000 302's altogether. So my question to you [41] there is, is there some explanation for why, in a sting operation involving stolen property, there would be this massive number of 302's documenting every conversation, whereas in Abscam, there were fewer than 100 over a 2-year period. In Lobster, there were memorandums to FBI Headquarters every month, summarizing all consensual monitoring, containing a chronological ordering, giving the information as to the parties, the date, the file, and the subject matter. The number of calls was as extensive, if not more extensive, as in Abscam. For example, there were 91 calls in one 1-month period from February through March 1978.

There were extensive surveillance memos describing the actions of targets after they arrived at the FBI premises, the storefront, and these memos were so thorough that they even described the actions of the targets down to the second on many occasions.

When there were telephone calls that were made, but not recorded, there are extensive memorandums in the Lobster file, contemporaneously explaining exactly why the calls were not recorded, and in some cases, describing the precise technical defect in the tape recorder that had arisen at the time.

And last, I guess, is that there were regular—that is, every 60 days—air-tels from the Director, from Headquarters, to the SAC in Boston, stating that on a prior date, authorization for use of a body recorder had been given, and demanding [42] that within 45 days, the SAC in Boston should provide Headquarters with information of the following nature: One, whether the recordings had aided in directing the course of the investigation; two, whether the recordings had obtained direct evidence; three, whether the recording devices had been used to furnish leads; and last, whether the recording devices had furnished protection to the user.

So our review, Mr. Revell, of the Lobster file revealed nine different supervisory and monitoring techniques that in our view were very good techniques, and perhaps account for the fact that Lobster is such a showpiece, and there has been no problem with Lobster.

The general question—and you may address any part of this number of things—but the general question is, is there something about the Lobster operation, and something, on the other hand, about the Abscam operation, which explains this very substantial difference in the types of supervisory techniques and the thoroughness—the apparent thoroughness—of Headquarters' monitoring of the situation?

Mr. REVELL. First, there is substantial difference, which I will explain. I may not be able to pick up all the points you raised; you will have to remind me.

Second, I would like to point out that Abscam was also successful. Twelve people accepted bribes out of 12 people who were offered bribes. All have been convicted, and only one case [43] has been overturned, and that is on appeal. So, if you are looking at success, Abscam was totally successful. The courts have upheld the legality of every action that the FBI took.

The Lobster case was very centrally located. It was a one-office-controlled operation that essentially covered one geographical area and one type of criminal activity. Most of our monitoring was from a fixed location, and we were controlling all of the actors on our side on a continuous basis, meaning the agents, undercover agents or State police officers. Therefore, it was a very controllable case.

The use of 302's was to describe testimony that those agents or police officers could give. If all those conversations had been on video-tape, those 302's would be redundant, and not necessary.

In Abscam—you talked about the absence of 302's—there were literally thousands of hours of videotape which, as you know, is the best evidence that the jury could possibly see as to the criminal activities. In fact, in Abscam, every criminal case was built around the activities that took place on videotape which were there for the jury and the judge to see.

The Abscam case also involved a great deal of mobility. It involved four different judicial districts; it involved different U.S. attorneys. It involved the strike force in the [44] Eastern District, the U.S attorney in New Jersey, the U.S. attorney in the Eastern District of Pennsylvania, the U.S. attorney in Washington, D.C. It involved a number of interconnecting spheres of influence, but not all of which operated in conjunction with each other. And yet, the same individuals had to play to each of those spheres of influence.

There were a great many differences in the way these operations were set up and could be set up.

Now, the next thing is that in Abscam, there was almost a continuous ongoing dialog between Headquarters and all of the individuals, whether it be Mr. Good, or Mr. Amoroso, or any of the other agents involved, on a several-times-a-day basis. Lobster was a case that was not receiving that degree of attention at Headquarters. It was not in essence being supervised out of Headquarters. It was being supervised in the field. So this was sort of a post-audit type reporting to the FBI on that case. We were monitoring it from a reactive basis. In Abscam, we were monitoring it on a moment-to-moment basis, including briefings, as you know, of the Director and the Assistant Attorney General of the Criminal Division, on an almost unprecedented basis as to the activities that were occurring.

Granted, some of the paperwork that you have pointed out was so effective in Lobster might not have existed, or did not exist, in Abscam, but the knowledgeable officials were [45] totally informed on what was happening in the case, including the authorization for the payment of the bribes.

So I do not think it is quite accurate to portray Abscam as a case that was out there, generating itself, with no control or supervision, and Lobster as just the opposite. There was a tremendous amount of direct control, direct supervision, direct oversight, and direct decisionmaking on the part of very high officials, not only in the field but at Headquarters. It was done on a contemporaneous basis to the case itself. Lobster was not that way. Lobster was done on a review basis in Headquarters to monitor the case from both an accomplishment standpoint and from a resource expenditure standpoint.

If you will pick up some of the other particulars, Mr. Schwein and I will try and answer those.

Mr. WHEELER. Yes, it is a little unfair to give you that whole laundry list of things, and I am willing to go back and articulate any one you want to talk about. Let me just ask you a couple of questions about what you have said, though.

Abscam began—and I now mean the long-term undercover operation approved by Headquarters—began in June or July 1978 and did not really turn to major political corruption, turn in a serious way to political corruption, as the FBI and the Department have testified, until Angelo Errichetti appeared on the scene on December 1, 1978. Now, there is a [46] period there from June or July of 1978 to at least December 1, 1978—and I think it really goes about a month more beyond that, in fact, but let us just take that period—when Abscam was not getting daily supervision from Headquarters. Mike Wilson was not talking to John Good every day about Abscam; in fact, the testimony of John Jacobs and Tom Puccio has been that in those early months, it was a nothing operation; it was small time; Tom Puccio even was not very happy about having approved it because it was so small time. And yet, even during that period when the activity was at a low level, and there was not a whole lot of it, there was no biweekly report of the kind in Lobster; there were no 302's of the extensive nature in Lobster; there was no running chronology of all the recordings, as there was in Lobster. And at the very least, those things could have been done. As a practical matter, in retrospect, going back and looking at the operation, if one wants to try to defend the operation, one is better able to do that, if you can tell the whole story and say, "Here are the documents that reflect it."

So one of my questions for you, Mr. Revell, is, given the fact that once the FBI enters undercover operations which are always going to be controversial, especially when they involve high-level political figures, wouldn't it be a better practice to insure that the documentation is there in all these operations, so that when they are criticized, the FBI can point [47] to the document and say, "Here is what happened"? That is only one factor. The second is that, as you say, a lot of the information in Abscam was communicated orally, by telephone, between Mr. Good and Mr. Wilson, but that information was then conveyed to other people higher up the line—to Judge Webster, in fact, that high; to you; to Mr. Gow, to Mr. Mullen. Wouldn't documentation, regular documentation, of some of the important information insure that everyone was indeed getting the same information at all times, and for that reason, wouldn't it be a better practice to follow the Lobster mode rather than the Abscam mode?

Mr. REVELL. We believed we were getting the essential information, as you recall, before any payments were made. There was not only specific documentation, but it would go up the line for the approval process.

I guess you are asking should not the Abscam case have been documented the same way that Lobster was, before we even knew that it was going into political corruption. I think that I could safely say that we certainly would like to have all cases receive the accolades that you have just given to Lobster. We run about 200 undercover cases a year. Some of them are very complex; some of them are almost a single, one-time incident. You cannot anticipate which ones are going to turn which way at all times. So as long as they comport with those requirements of the law and the requirements of our policy at [48] the time, then we are satisfied. That does not mean that some are not better than others. Now——

Mr. WHEELER. Well, may I stop you right there? As you say—I mean, isn't that the critical point, Mr. Revell, that as you say, you never know which way one of these operations is going to turn? Doesn't that dictate that the way to insure that everyone who should know, always know when it does turn, is to have something like one of these regular, biweekly reports—or, it does not have to be biweekly, but maybe a monthly report, where you do what Lobster did, which is to summarize the new targets, the new techniques, the new geographic directions, the new directions in terms of investigations of criminal activity? And I am not saying this should be a law by Congress. I am not even saying it should be in the guidelines. But it seems to us that it would be a sound administrative practice for, let us say, the agents' manual, to require, to tell agents in the field that, "When you have one of these undercover operations, one of the things you ought to provide to the supervisor at Headquarters"—who is, after all, a fairly low-level official—"is a biweekly, or bimonthly, or monthly report, summarizing the following kinds of information." It seems like a fairly easy thing to do.

Mr. REVELL. We do have monthly reporting requirements. We also have, as you know, a requirement to have a review by the Undercover Review Committee at least every 6 months if [49] the investigation is to continue. Prior to that review by the committee, it must be reviewed by the Headquarters supervisor and his section chief, to determine if it will even be continued, and that is even preceded by a review by the SAC and the U.S. attorney. After all that is done, it still has to come to me for my approval, and in certain, very sensitive cases, it goes to the Director. All those things are occurring.

In the Abscam case, you are going back prior to my involvement in the case or to anybody's sitting on this panel. I can only say to you that every aspect of the case that has been tested in courts has been found to be legal. And, while as a manager of investigative operations, I might have preferred the type of documentation that you have set forth in Lobster, as long as the information that was obtained was documented in accordance with the rules and the regulations and the law, and has held up under it, then, since our procedures and policies have evolved since then, I think it is almost untenable to go back and judge the genesis of that case on the same standards.

Mr. WHEELER. Well, I guess that is what I am asking, though, Mr. Revell. We are in 1982 now. Lobster actually preceded Abscam. It started in 1977. As I said, Lobster seems to be an exemplary operation. I guess the question is, today in 1982, does the FBI internally, through whatever mechanism, urge or require that its agents follow [50] the practices that proved so beneficial in Lobster, or is it still a matter totally up to the discretion of every agent?

Mr. REVELL. No. As you know, the guidelines provide for a substantial amount of administrative control on the part of both the SAC, the U.S. attorney, the appropirate section at FBI Headquarters, review by the committee, approval by the Assistant Director, and so forth. We have also implemented other types of controls, including expenditure levels, monthly reports. If a bribe payment is made at a low level, there must be a reporting of that to Headquarters immediately after it has occurred. It must be approved by the SAC, and concurred in by the U.S. attorney. If it reaches a higher level, there must be prior approval by FBI Headquarters. There are a number of procedures and safeguards that are in effect that, to my mind, would not reflect the same type of adverse inferences you have drawn from the initiation of Abscam.

I am not saying that the initiation of Abscam in its first few months was wrong or inadequate. I think there was also in that case a lot of feeling out of the turf. It did not have the specific target, the specific knowledge that Lobster had that the Winter Hill gang and La Cosa Nostra were involved in specific hijackings and thefts. What we had was general information that there was a great deal of ongoing [51] activity amongst individuals who were known, or had in the past been known, to Mel Weinberg, associated with security thefts, art thefts, and these type activities. So the targets were different, the intelligence was different, and the methodology to reach them had to be different.

With those particular explanations, if you have any specific question on the documentation in Lobster, Mr. Schwein is in a better position to answer than I am.

Mr. WHEELER. Well, actually, the question I would like to address to Mr. Schwein is one that involves one of the costs of Lobster, because, Senator, as exemplary as Lobster was, what it tends to show is that no matter how well done an operation is, that there are some costs to the public that occur. And I would like Mr. Schwein to address one of these.

The documents show, Mr. Schwein, that there came a time at the end of Lobster, when a particular shipping company learned, a year after the FBI had recovered one of its hijacked trucks, that the FBI had in fact recovered that truck. And the company wrote to the FBI and asked for indemnification, because the company said, "If you had turned the truck back to us when you first got it, as opposed to holding onto it for a year, we would not have had to go to our insurance company and get insurance payments, and they charged us retrospective premiums, and also, there was a $5,000 deductible, and we ended up being out-of-pocket $61,000 as a result of that."

[52] Now, of course, they did not observe in their letter that if the FBI had not recovered the truck, that they never would have had anything anyway, but they demanded compensation. The files that we saw did not reflect how the FBI dealt with that, but it does show that the FBI was put in a difficult position. If it had turned the truck over immediately, there was the risk of blowing the cover of the entire operation, but by holding onto it, it did cost this private party some amount of money.

I would like you to tell the committee exactly what was done with that situation, because it really goes to whether or not there should be a recommendation by the committee to Congress that even where an FBI undercover operation is perfectly run, and there is a private cost, should there be legislation that compensates the private parties.

First, what actually happened in that case?

Mr. SCHWEIN. In the case of Lobster, many, many loads and partial loads were recovered. We returned as many as we could safely, as fast as we could. In fact, as you know, we had a warehouse very close to the buy site. In some instances, we were unable to return the loads, and for the integrity of the operation, we had to hold onto it.

I was out of that operation prior to the incident, and I do not know, frankly, if he was indemnified or not. I would doubt it, but I don't know—do you, Bob?

[53] Mr. RICKS. No, sir he was not.

Mr. SCHWEIN. Yes, that is my understanding, he was not indemnified.

Mr. WHEELER. Mr. Revell, do you have any recommendation? Is there an FBI position—again, in this instance, I think I can unequivocally say that this cost to the private party reflects not at all—there is nothing bad about the way the operation was run. It is simply one of the necessary costs. The question is, who should bear it, the government or the individual.

Mr. REVELL. We believe that there should be some legislation to allow indemnification for innocent parties. We cannot have any long-term, effective, high-level undercover operations if, every time we recover a piece of evidence, we have to return it. If you will recall, in my introduction of this case, I pointed out that there was information from inside most of these companies that led to the hijackings and thefts. All we would have had to have to done in this case was to return a truck to the owner, and it would have been all over for our undercover operatives.

On the other hand, when you have cases with literally hundreds of vehicles or hundreds of items of stolen property and you receive intelligence about them—they may not even be in your custody, but you receive intelligence on them—and at some [54] point, you intend to act on that intelligence and to recover this property, there are going to be innocent parties that somewhere down the line are going to suffer. That is one of the unfortunate tradeoffs that you have to make. If you want to penetrate the upper echelon of an organized criminal enterprise, you cannot act on the first piece of information, even though there may be some loss to an innocent party.

At the present time, there is very little that we can do to assist those innocent individuals. They can, of course, attempt to sue, or they can ask for private legislation, but there is very little that the FBI can do, except to try and expedite the case to the greatest degree we can, to reach the top echelon and to put an end to that entire enterprise. Short of that, Mr. Wheeler, there is virtually little we can do, if we are to succeed in reaching the upper echelons of the criminal enterprises.

Mr. WHEELER. It is one of the necessary costs of an effective undercover operation.

Mr. REVELL. That is correct.

Mr. WHEELER. Mr. Ricks, in Labou, the initial budget request that was proposed was for $305,320, and by the time the formal request for approval was made a couple of months later, that had been moved up to $899,914. Can you explain how the first estimate on what that operation was going to cost [55] could have been so far off from what the formal approval number was?

Mr. RICKS. First, I would like to say I was not involved with the original budget submission. Some of the costs originally submitted, however, were perhaps not totally realistic for what they had projected that they wanted to do. They had indicated that they wanted to have two separate construction companies. One was a prime, one was a sub. Additionally, they decided that they needed a number of more undercover agents, they needed additional support for those agents, including the residences involved, cars, wardrobes, all the necessary things that would go into an undercover operation. I believe they were looking initially at the estimated 6 months' cost for that operation. The final budget was for the entire year, the $899,000—I believe; you may correct me on that, but I believe that was the case.

They were probably overly optimistic with regard to the first submission, in that I believe they believed that it would be self-sustaining within about a 6 months' period—which was totally unrealistic. There is no way it could support itself within that timeframe.

They went back and made additional projections that the company would not be able to carry itself within 6 months, and the other budget indicated it was based on the case that there would be no work on hand within the first year. If work [56] was generated, if things were successful, they estimated that the budget in fact would go down. I believe projections were that the costs would be in the neighborhood of around $600,000; it could possibly come in lower. So, a number of factors were there. It was expanded in scope, and probably a more realistic estimate of what the cost would be.

Mr. WHEELER. The document that raises the figure of $899,914 said that after discussions with—I think it said Administrative

Services Division—it was decided that the initial estimate was far too low. But it did not expand on what those discussions were or why it was. That it why I asked the question.

The underlying question, really, Mr. Ricks is that rather large difference [illegible] proposals that apparently was corrected after discussing it with more knowledgeable people, and the problems that were incurred in the early part of the operation with respect to some of the personnel—I think you know what I am talking about, that there were some undercover employees who just were not effective, and they ended up being replaced. I guess it raises the questions, should the FBI, namely, law enforcement officers who are trained as law enforcement officers, can they get into the business, really, of establishing a proprietary company, where they go out and try to compete with existing companies in the same industry. What is the FBI's conclusion about that after Labou?

[57] Mr. Ricks. I think we learned a big lesson. We learned that it is probably much more difficult than we realized. There are huge, enormous problems; the complexities were greater than any of us had ever faced before. What we learned was that we were spending 99 percent of our time initially, trying to get a company going. All of our energies were absorbed by just maintaining the thing, keeping it afloat. There was little time left to go out and actually investigate. If we are going to establish something this large, we had numerous discussions that it should only be where the targets are of such magnitude, are well known, and we really are ready, willing, and able to address these with all the personnel needed, and the resources. But it must be on a truly selective case. This would not be something that anyone would approve routinely now. We have had a couple of instances where they have come in, and we demand an enormous amount of information before such a thing would be given consideration. Usually, they are knocked out of the box, and as a result of the Labou operation, and rightly so, because we want to know what commitment they have. We found our people, in some cases, were only getting 2, 3, 4 hours' sleep a night; they had no time left. The cooperative source, he could go on 3 hours' sleep a night. He would work 14, 15 hours a day at the job, and then would try to meet with subjects until 2 or 3 o'clock in the morning, and had to go back to work at 7. You cannot go on that schedule very [58] long without burning out.

Mr. Wheeler. You are now with the DEA, aren't you, Mr. Ricks?

Mr. Ricks. Yes, that is correct.

Mr. Wheeler. The DEA gave us an operation file to study called Scorpion, and that was an operation in which the DEA set up a proprietary, really, to sell chemicals that would be used to manufacture illicit drugs. Is it common for the DEA to do that, to set up proprietaries of that nature?

Mr. Ricks. There is really no comparison between the two. You are talking about a storefront, maybe a mail drop, where—and I do not want to get into too much detail about exactly what they do, because the technique is still utilized today. But we have very few actual proprietaries. That is, we have very few businesses as such that are competing with private enterprise. In the Labou operation, we were a legitimate company. We were competing in the marketplace. In the case of DEA, I know of no such actual proprietaries.

We set up storefronts, we may in fact incorporate, we may give the operation all the indicia of being a legitimate business, but in fact, they really are not.

Mr. WHEELER. Mr. Revell, does the FBI currently have any proprietary operations of any kind undercover?

Mr. REVELL. I would prefer not to answer that, Mr. Wheeler.

[59] Mr. WHEELER. Well, is it the FBI's policy after Labou that it will not establish a proprietary, or it is simply going to be a very unusual circumstance under which it would do it?

Mr. REVELL. I think Mr. Ricks' comments go to the complexity of the particular scenario that was established in this case: setting up a prime contract in a major metropolitan area. That was a lot more than we were at that time prepared to handle. That does not mean that we cannot use a proprietary in a much simpler context, in a much more restrained context, and that it is not effective. In fact, it has been very effective for us in many cases.

The lessons we learned from Labou apply to matters of that scale, and also apply to future operations that we might see which could escalate to that scale. They certainly do not mean that our fingers were burned to the point where we will never try again.

After all, if you are going to penetrate a particular ongoing scheme, there is very little else you can do, unless you can either turn over one of the individuals involved for some reason, or develop an informant who can get on the inside.

The use of a proprietary is effective, and I think we have learned from this one the scale that we can be involved in. I would say today that we could probably approach that scale [60] without the same problems, but we would have to be ready and willing to expend the resources. That would mean it would be a very important case for us.

Mr. WHEELER. The W Street townhouse that was used in Abscam in 1979 was originally leased for the Labou operation, isn't that right?

Mr. REVELL. I believe they even remodeled it.

Mr. RICKS. Yes, that is correct.

Mr. REVELL. Yes. It was leased and remodeled by the Labou operations.

Mr. WHEELER. When the decision—and I will just tell you this, that one of the contentions or allegations that has been made by some people is that the decision by the FBI to use the W Street townhouse for Abscam was a decision made in order to hide the massive financial losses that were incurred by the FBI in conducting the Labou operation; is that correct?

Mr. REVELL. No; that is not correct. Of course, our books and records are open to scrutiny by the Congress, by the General Accounting Office, and by our own internal inspection procedures. There is no way that we could ever, even if we were so inclined, hide the cost of an operation. In fact, Abscam preceded Labou as an ongoing operation. What did occur was that there was a facility there available which was not being totally utilized. [61] It comported with the scenario in Abscam, and, Mr. Ricks, having involvement in both, suggested to the two entities that they might want to utilize this particular resource. The cases were not combined, although on occasion, Mr. Amoroso used the Labou facade to give credence to his own character and the role that he was playing. There was never a mixing of the subjects of the cases; there was never a mixing of the cases themselves. The facilities of one case were used to augment and to assist in the operation of the other.

Mr. **Wheeler**. When you say Mr. Amoroso used the Labou facade to—I am not sure what your words were—to enhance his credibility, or something like that, what do you mean? What did he do?

Mr. **Revell**. I think Mr. Ricks ought to answer that. He used the operation, the aura of the construction company, to add to his own credibility.

Mr. **Ricks**. What we did, if they did any checking at all, of the subjects, they would learn that it was Olympic Construction that was behind the house where they were meeting. So it was decided that the sheik would have the story that he had bought the construction company; he was looking for contracts in the Washington, D.C., area. So when the discussion would center around whose house it was, they said: "Well, it is a house that is associated with Olympic Construction, which [62] we have bought."

At one point in the operation, we were thinking—we had had some leads in the New York-New Jersey area regarding construction, and in fact, Amoroso did throw out the proposition that they had a construction company that was willing to do some work in the area. We ran out of time, and that was never followed up on, but occasionally, it did come up. It was a logical story, that the contractor owned the house, it was connected to the construction company.

Mr. **Wheeler**. I believe your prepared statement says that the operation, the company, was sold to Mr. Muffoletto.

Mr. **Ricks**. Correct.

Mr. **Wheeler**. Was it sold at a profit?

Mr. **Ricks**. It is hard to say what a profit is. We had extensive negotiations trying to sell the company. Originally, as we said in the statement also, it was intended to be Mr. Muffoletto's company. We had to take the company over because he could not obtain bonding, and we had made obligations. The entire operation would have folded. We had made an expenditure at that time of—well, it was substantial. We made a number of obligations. We had bid and won a contract. If we had defaulted on that contract, of course, the operation would have been over. So we were forced to step in and assume that role. It had always been our intent that it would be Mr. Muffoletto's company. He had indicated he wanted to start a company in [63] Washington, D.C. We had no desire to have a company. It became quite complicated, figuring out exactly what was put into the company for part of the facade, for cover, what was actually put into the company in the form of what we would call working capital and actual contribution.

In terms of what we would consider to be working capital, other than that of covering for investigative purposes the elaborate facilities and so forth, we had an estimate that it was approximately $100,000. Our CPA's looked at it—the best we could do. It gets very complicated. The bookkeeping was enormous.

As to Mr. Muffoletto, the agreement was that he would pay us approximately $92,000 and some cents. Part of that was the forgiveness on a computer debt that we had bought with Mr. Muffoletto. He agreed to buy it from us. That gave us, then, a total of $70,000 in cash that he had paid to us, in two equal installment payments. He did make those two installment payments on time.

So what we are talking about, was it at a profit? There was no profit in the company. Realistically, no profit was there. All that was there was whatever goodwill that might have been created, and it would be hard to put a figure on it. As you know, a construction company is only as good as its next job. In this climate, it could go bankrupt the next day. The work on hand, at the time, it was estimated that [64] maybe these jobs did generate a 5-percent profit margin, but because of the enormous overhead that we had created to maintain this facade, I do not believe there was any profit, really, on the books.

Mr. WHEELER. All right. The initial approved budget for Operation Labou was $899,914. What is the total net cost that the FBI says or shows on its books as being the total net cost of Operation Labou?

Mr. RICKS. I believe the final figure came to be $1.3 million.

Mr. WHEELER. Mr. Revell, given the convictions that arose out of Labou, would the FBI today conduct an operation that, as it planned, would cost $1.3 million to get those convictions or not?

Mr. REVELL. If we knew that would be the final outcome, obviously no—even though there was a $50 million actual loss prevented in that case. But if you go back and look at the targets, and the area that the case was intended to reach, and if we had reasonable expectation that it would reach those targets, then we might spend that amount of money. We would be very circumspect. I think this case, as Mr. Ricks has said, showed us that it is a tough economy out there right now, and the building trades, as I think Senator Huddleston knows from his experience, is a rough area to be in any time, and you do not get into them without [65] pretty well knowing the score. Mr. Muffoletto was an expert. We simply did not anticipate all that might be involved.

So the answer is, if that was all, and we could foresee that was all, no, we would not go into it.

Mr. WHEELER. Senator, there are a number of other questions about these operations that I think would be informative, but because of the lateness of the hour, I would like to just ask the representative of the INS, and Mr. Ricks, the representative of the DEA to state for the committee whether the INS and the DEA think that the current FBI undercover guidelines could practicably be applied to all of the components of the Department of Justice, namely, DEA and INS, as well as to the FBI, given that the FBI's undercover guidelines are far more extensive, far more detailed, and at least on their face, more restrictive than the current DEA guidelines, and my understanding is the INS currently has no actual guidelines, and it simply has some policy statements.

Mr. RICKS. Do you want me to go ahead and make that statement, Mr. Wheeler?

Mr. WHEELER. Yes.

Mr. RICKS. It is my opinion that, due to the limited use of proprietaries in complex investigations by DEA, that the FBI guidelines at this time—and I would like to make that point, because we are intending to expand, if we can, and Mr. [66] Mullen, the current Acting Administrator of DEA has asked me to determine should we have an undercover review committee at DEA—at the present time, all proprietaries, all so-called reverse undercover operations—those are the complex ones that have additional liability or significant risk of violence involved—do come through the Chief Counsel's Office. I do review all those operations. If I determine at that time that we need an undercover review committee, I would make that recommendation.

I believe the current guidelines of the FBI are not applicable because they are geared to the FBI structure. It was drafted to comport with what the FBI had in existence, their level of review, including the SAC's level of review, FBI Headquarters' level of review, the undercover review committee with departmental officials being in attendance, and also, the utilization of the Office of Legal Counsel, as well as the Criminal Division of the Department. Those relationships do not necessarily exist exactly as they do with the FBI in DEA.

So, for those reasons, and for the fact that the DEA is a single-mission agency, we do not go out and conduct public integrity investigations; if we get into a long-term situation, we would call the FBI in, and they would then be bound by their own guidelines. DEA is not out to seek out public corruption. So I do not believe that they are necessary.

Mr. WHEELER. Mr. Ricks, what about the Attorney General's guidelines on the use of informants and confidential sources? [67] Do those apply to the DEA as well as to the FBI?

Mr. RICKS. No. We have our own guidelines, quite similar; the language is quite similar——

Mr. WHEELER. Is there any reason why there could not be one set of guidelines on the use of informants and confidential sources?

Mr. RICKS. I believe again, the utilization of informants is different in DEA. The FBI will go to almost any cost to protect their informant. DEA, as a rule, uses what they call the defendant source, or defendant informant, in that it is a person who they have got in a bind in some way, who is trying to negotiate a deal.

We are dealing, in drug enforcement, with a much more street-level-type person. We are dealing with the people described as Weinbergs, even of a worse-type character. The informants that we have, we as a rule cannot maintain those informants for a long-term basis, because they are criminals. We do not trust them as much as the FBI can trust their informants. They are used on a more short-term basis. We have a few long-term informants, but as a general rule, no.

Also, there are clauses in there that require full consultation with the U.S. attorney's office. DEA reveals their informants to the U.S. attorney; they make all their files available to the U.S. attorney upon request; the FBI does not. [68] We would probably not want the FBI guidelines.

Mr. WHEELER. Mr. Revell, one of the guidelines in the DEA guidelines with respect to informants is paragraph II(a)(5) and it states: "Whenever practicable, two DEA agents shall be present at all contacts and interviews with informants." I do not believe there is a comparable provision in the FBI informant guidelines. Do you think that that would be an overly restrictive guideline to insert into the FBI's informant guidelines?

Mr. REVELL. Yes. We have other safeguards. In the first place, we have only 7,000 agents on the street. With the number of contacts we have as informants, if we have to double up every time, we are going to reduce our effectiveness.

Second, we require a supervisor to meet all of the approved informants, and we do require whenever possible, and there has to be justification when it is not possible, two agents to participate in any payment to an informant. So we have safeguards in place that have worked well for us, and we see no reason to go beyond that.

Mr. WHEELER. Senator, could we hear from the INS on these questions?

Senator HUDDLESTON. Certainly.

Do you want to identify yourself for the record, please, sir?

[69] STATEMENT OF HUMBERTO E. MORENO, DIRECTOR, OFFICE OF ANTI-SMUGGLING ACTIVITY, U.S. IMMIGRATION AND NATURALIZATION SERVICE, WASHINGTON, D.C.

Mr. MORENO. I am Humberto Moreno, and I am the Director of the Office of Anti-Smuggling Activity for the Immigration Service.

Mr. WHEELER. Could you tell the committee what is the current status of the existence of guidelines or the nonexistence of guidelines for undercover operations by the INS?

Mr. MORENO. We are at this time preparing our guidelines, and we have sent out some interim policy position papers on the use of undercover activity. And within the next few weeks, we will have our guidelines established.

Mr. WHEELER. The guidelines that are being drafted, are they going to be pretty close to the FBI undercover guidelines, or will they be markedly different?

Mr. MORENO. We are looking at the FBI guidelines, and we also have input from various other branches within the Service, besides the anti-smuggling unit, that do undercover activity. But it would be fair to say that the guidelines will be parallel and similar to the FBI guidelines.

Mr. WHEELER. One of the documents that the Department of Justice provided us to review were some undercover guidelines from your Dallas office, and they are pretty extensive, but they [70] are also substantially different from the FBI guidelines. Are the ones that you are contemplating more like those or more like the FBI guidelines; do you know?

Mr. MORENO. We will have our final document within the next 10 days, and then we will present that document to Mr. Jensen's office in the Criminal Division. To answer your question, they are going to be similar to the Dallas document that you received from us.

Mr. WHEELER. Are there any particular differences between INS undercover operations and FBI undercover operations that you can point to, that you think explain why you could not just adopt wholesale the FBI undercover guidelines?

Mr. MORENO. I think what has been testified to just briefly, just a moment ago, about the difference in the kind of work that the

FBI does, DEA does, and the Immigration Service does, is probably the reason for the change and the difference in the guidelines. We target a similar type of situation, similar to DEA. In the event that we run across a case where perhaps kidnaping is involved, or peonage, which is the involuntary servitude of individuals, we do contact the FBI and work with them. So the answer is basically the same. We are targeted toward one particular type of criminal and not a broad spectrum of criminals.

Mr. **Wheeler**. The one undercover operation file that was given to us to review by the INS was a case in which the INS had an undercover agent—if that is the right word; I think it [71] is—the undercover agent actually went down to the border and became one of the people on the truck that were then brought up as a migrant workers to the Midwest, to the Chicago area, and it resulted in a number of arrests and, I think, convictions, although I am not sure; there were some entrapment problems. But could you describe for the committee, generally, the kinds of undercover operations that the INS engages in?

Mr. **Moreno**. Basically, the case that you refer to is the general profile of an undercover case for the Immigration Service. Most of our undercover operations are directed against smugglers of undocumented aliens, and that would involve our undercover agents posing as transporters, drivers, in many cases, as undocumented aliens themselves, assimilating the role of the undocumented alien and going and identifying drop houses, safe houses, throughout the routes, and identifying the principal people involved. That is basically what our undercover operations are right now. We do pose as members of families, trying to recover children that have been kidnaped by smugglers, and we do pose as ranchers and entrepreneurs, people that need undocumented workers. Those are basically the roles.

Mr. **Wheeler**. Is the use of undercover agents a relatively recent phenomenon at the INS, or has this been going on for some number of years?

Mr. **Moreno**. No, it has been going for many years. [72] It is a broadened type of effort. We are increasing the undercover capacity and the undercover techniques that we use. But it has been in existence for many, many years.

Mr. **Wheeler**. Senator, I think that is all the questions I have.

Senator **Huddleston**. Let me ask the INS representative this question. Do you actually get into the area of fraudulent documentation, people who actually create these documents; is that your responsibility?

Mr. **Moreno**. Yes, sir. The initial undercover effort by the Immigration Service, going back, say, 20-some-odd years, was in the purchase of fraudulent documents, and we are stepping up that activity, also. Most of the work, as I said, is directed against smugglers, and many smugglers provide a dual service, entry and documentation.

Senator **Huddleston**. Have you uncovered any substantial printing operations that do create these false social security cards, or green cards, or whatever?

Mr. **Moreno**. We have, in the Chicago area, uncovered the majority of our fraudulent document-type cases. We do have some cases also where some officials have been involved in selling these documents. So, yes, we work them all the time.

Senator HUDDLESTON. Now, some of this activity may occur overseas, may it not, the actual manufacture; do we have any way to get at that kind of operation?

[73] Mr. MORENO. Yes, sir. We work with the host countries that send some of these people up, Mexico being our primary area of origin, and we do work with the Mexican authorities whenever we do uncover information like that. They will respond to us when the information is transmitted to them through proper diplomatic and judicial procedures.

Senator HUDDLESTON. That is all I have.

Have you finished?

Mr. WHEELER. Yes, Senator.

Senator HUDDLESTON. That would conclude our hearing today, then. I would ask that if our witnesses would permit, that there may be some written questions submitted by the members of the committee, as Senator Mathias was not able to get back, and other members have other committee meetings today, so if we could leave the record open until such time as you have had an opportunity to respond to any written questions that might come, if that is agreeable to you.

With that, we thank all of you for appearing, and for your testimony.

The committee will stand in adjournment subject to the call of the Chair.

[Whereupon, at 4:34 p.m., the committee was adjourned, subject to the call of the Chair.]

[1] HEARINGS ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

TUESDAY, SEPTEMBER 28, 1982

U.S. Senate,
Select Committee To Study Law Enforcement
Undercover Activities of Components
of the Department of Justice,
Washington, D.C.

The committee met, pursuant to notice, at 3:34 p.m., in room 457, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr. (chairman of the committee) presiding.

Present: Senators Mathias and Rudman.

Staff present: James F. Neal, chief counsel; and Malcolm F. Wheeler, deputy counsel.

Senator Rudman. The committee will be in order. I want to apologize in behalf of the committee for what has happened here. We had a series of rollcall votes starting at 2 o'clock, and all the attendant problems with those votes, and I believe the chairman and the vice chairman and other members have all been tied up, and I am delighted to be able to get over here, to at least start the hearing.

I want to welcome our opening panel and say to you that I [2] had a brief discussion with counsel prior to convening the committee and decided that, although it is our policy here at this committee to swear all witnesses, since you will not be giving factual testimony as such, I think that would be superfluous, so we will not swear the witnesses of today's panel.

So, if you will both introduce yourselves and give us your opening statement, if you have any, we will proceed from there

TESTIMONY OF A PANEL INCLUDING KENNETH R. FEINBERG, ATTORNEY WITH THE LAW FIRM OF KAYE, SCHOLER, FIERMAN, HAYS & HANDLER; AND JOHN KAPLAN, PROFESSOR OF LAW, STANFORD UNIVERSITY

Mr. Feinberg. Mr. Chairman, my name is Kenneth R. Feinberg. I am a practicing attorney here in Washington. I represented Senator Williams in the proceedings before the Senate Ethics Committee. I did not represent Senator Williams at his trial, nor did I represent Senator Williams on the floor of the U.S. Senate during the expulsion proceedings.

I also previously was special counsel to the Senate Judiciary Committee under the chairmanship of Senator Kennedy, and prior to that was assistant U.S. attorney in the Southern District of New

York. [3] So, as I say in my statement, I bring some various perspectives, I guess, to this problem.

Because of the lateness of the hour, Mr. Chairman, I would summarize my statement in just a few brief minutes and ask that the statement in its entirety be inserted in the record.

Senator RUDMAN. Without objection, it will be incorporated in full in the record.

Mr. FEINBERG. I suppose, Mr. Chairman, that my position as to what recommendations should come out of this committee concerning Government undercover operations falls somewhere between the two prevailing views that you and other members of the committee have heard in recent months. On the one hand, as my statement points out, Mr. Chairman, I am opposed to making substantive policy changes in undercover operations, at least insofar as those changes that are most often talked about, changing the substantive law of entrapment, or coming up with some sort of judicial warrant requirement that would govern undercover operation initiation or targeting of specific individuals. I guess that is my law enforcement perspective hat. I think it would unduly tie up undercover operations and run the risk of aborting those operations which, in another context, involving narcotics or racketeering are, I think, very, very valuable.

On the other hand, Mr. Chairman, I also disagree somewhat with the testimony that comes from Justice Department officials [4] and others, when they say that the solution to Abscam-type situations, the solution is to improve the after-the-fact review process in the Justice Department, to have a better input from the field earlier on what is happening. These are some of the recommendations, I understand, that are in the Luskin report and have been recommended by other Justice Department officials. We just have to get the tape-recorded transcripts transcribed quicker, and we have got to get the 302 FBI reports down to Washington quicker, and if we can come up with management control solutions or reforms that will give the Justice Department after-the-fact review authority, or after-the-fact review success, then this is the solution insofar as a solution is necessary.

I come down somewhere in the middle, Mr. Chairman. I believe that we should not touch substantive policy, but that after-the-fact review reforms are not sufficient. And my testimony spells out, Mr. Chairman, my view that in order to promote better accountability, it is important that we come up with some recommendation that would authorize or require the Director of the FBI, the Assistant Attorney General in charge of the Criminal Division, or his delegate, if administratively there is just too much work, along with the Operations Review Unit, to better control in advance some of the sensitive undercover operations that result in an undercover case like Abscam.

[5] In conclusion, Mr. Chairman, in order to be brief, let me also point out that to me, the biggest problem with undercover operations is the concern about general oversight. If you are in Washington and you are in the Justice Department, your comments generally are, "Well, I was not involved in the day-to-day operations; I had a general, bigger picture to look at." But if you are in the field, and the question of accountability is raised, your answer generally,

was, "Well, everything I did, Washington knew about, so it was authorized." And as my statement points out, Mr. Chairman, I think what has to be done here is that we not lose sight of the fact that reforms that talk about post-operations review in the name of due process or what-have-you, those are all well and good, and I endorse those reforms for the most part, but they do not go far enough. And it would be a mistake and a lost opportunity, I think, if this committee did not recommend some form or prospective authorization along the lines that I suggest in my detailed statement.

Thank you very much, Mr. Chairman.

Senator RUDMAN. Thank you, Mr. Feinberg, for that excellent summary.

[The following was received for the record:]

PREPARED STATEMENT OF KENNETH R. FEINBERG

Mr. Chairman and Members of this Select Committee, my name is Kenneth R. Feinberg. I am presently the managing partner of the Washington, D.C. law firm of Kaye, Scholer, Fierman, Hays & Handler. During 1981 I represented former Senator Harrison A. Williams, Jr. in the proceedings before the Senate Select Committee on Ethics. From September 1, 1975 to August, 1980, I served as Special Counsel to the United States Senate Committee on the Judiciary, with primary responsibilities in the areas of criminal justice and domestic intelligence policy. From September 1, 1972 to September 1, 1975, I served as an Assistant United States Attorney for the Southern District of New York.

I very much appreciate the opportunity to appear before this Select Committee, which has been given the critically important mandate of examining all aspects of government undercover operations, including the facts and circumstances surrounding the undercover operation known as ABSCAM. I understand that it is the responsibility of this Committee to make whatever recommendations are appropriate to insure that any future undercover operations are conducted in a way that strikes an appropriate balance between legitimate law enforcement needs and the need to protect the individual liberties of the American people.

I also believe it important to distinguish your function from that of the federal courts currently reviewing the lawfulness of the ABSCAM operation. Judicial determinations concerning the legality of ABSCAM should not be viewed as conclusive on the issue of the wisdom and propriety of ABSCAM itself; this Committee, as part of its mandate, will hopefully look beyond technical legalities and those standards which must be met to satisfy minimal constitutional requirements. It has the responsibility to establish law enforcement policy recommendations and to urge the Congress and the Executive Branch to implement such recommendations. I hope that this distinction between the different appropriate roles of the two branches of our federal government will be kept in mind as you enter the final phase of your deliberations.

Mr. Chairman, I approach my analysis of government undercover operations in general, and ABSCAM in particular, from three different but relevant perspectives. First, as a former Assistant United States Attorney, I am familiar with the value and importance of government undercover operations and was responsible for overseeing a fair number of them. It is this law enforcement perspective that tells me that inflexible statutory restrictions should not be imposed on our law enforcement agencies if they are to be effective in combating crime. Numerous strategic decisions must be made every day in the course of any undercover operation; law enforcement discretion is essential to this process. And such discretion must not be unduly hampered.

We need effective law enforcement undercover operations. For whatever the reason, there will always be those determined to violate the law; without effective use of law enforcement informants and undercover techniques, these individuals will often successfully escape detection.

Second, as the Special Counsel to the Senate Judiciary Committee, I was a participant in the ongoing effort to place appropriate limitations on government undercover operations. Working closely with representatives of the Federal Bureau of Investigation and the Department of Justice, we were successful in enacting legislation establishing a judicial warrant requirement for domestic "national security" electronic surveillance. In addition, important steps were taken toward enactment of a statutory charter for the FBI.

I note with some sense of frustration and disappointment, the failure of the Congress as yet to enact into law a statutory charter for the FBI. I know from first-hand experience that the agency itself and Director Webster have supported past legislative efforts to enact such a charter delineating the appropriate responsibilities of the Bureau and its agents. I also recall the courageous efforts by then Attorney General Edward Levi to promote not only enactment of an FBI charter, but also legislation establishing safeguards for foreign intelligence wiretaps and guildelines to assist the Department of Justice in its exercise of prosecutorial discretion. I particularly remember Attorney General Levi's prophetic admonition that, although in the wake of the Watergate scandal the time was ripe for promoting such measures, the fleeting opportunity would quickly pass. He struggled to convince all interested parties—the law enforcement community, the defense establishment, the Congress and civil liberties organizations—that "perfect" legislation was the enemy of the "good," that everyone should seize the opportunity to strike an appropriate balance between legitimate law enforcement concerns and individual civil liberties. Unfortunately, despite some real successes, his efforts at enacting an FBI charter fell short. Although S. 1612 was introduced, and has been the subject of some attention, I am concerned that the reaction which Attorney General Levi warned of has become a reality. His view—and the view of many others—that the Bureau as well as the American people need an FBI charter will hopefully be a primary recommendation of this Committee.

Finally, I bring to my analysis of government undercover operations and Abscam itself the first-hand perspective of a defense lawyer who represented Senator Harrison A. Williams, Jr. before the Senate Ethics Committee. It would, of course, be inappropriate for me to discuss the specific facts and details of that individual case, particularly since the entire matter has not yet been reviewed by the appellate courts. I have so informed the staff of this Committee. Nevertheless, my representation of Senator Williams afforded me the opportunity to engage in a comprehensive review of the history, facts and circumstances surrounding Abscam. I learned much during my representation of Senator Williams and gradually became convinced that reform of government undercover operations was necessary. I have concluded that in two areas in particular—management and supervision of undercover operations and coordination of multi-jurisdictional investigations—appropriate remedial measures are necessary and should be recommended by this Committee.

But, specifically, what recommendations should be made? I start by respectfully suggesting what this Committee should not recommend. For example, I question the wisdom or utility of recommending statutory changes in the substantive law of entrapment, or urging the creation of some form of warrant requirement as a prerequisite to either initiating certain undercover operations or targeting a specific individual.

I respectfully suggest that the former proposal—making it easier to raise a successful defense of entrapment by citing objective evidence of alleged government misconduct despite clear evidence of a subjective predisposition to commit the crime—is an overreaction to the unique, sensitive circumstances surrounding Abscam. The current subjective entrapment defense—first articulated by the Supreme Court in 1932 and reaffirmed as recently as 1976—is appropriately narrow to make it of limited utility to the narcotics dealer, racketeer or any other criminal predisposed to commit the crime charged. To broaden the defense in reaction to preceived ABSCAM abuses, is to engage in overkill; overly broad entrapment recommendations will tend to undercut what members of this Committee would likely agree are legitimate law enforcement activities in other contexts. I would leave the issue of entrapment to the Courts, to be determined on a case-by-case basis.

Nor is the judicial warrant requirement—at first glance an attractive and imaginative proposal—a wise idea. I have two reservations with the warrant concept. First, from a law enforcement perspective, I question the impact of such a requirement on the flexibility needed by law enforcement officials to respond quickly and early enough to undercover opportunities. This is the point I made earlier about unduly restricting or hampering such operations. I am concerned that such a warrant requirement—whether directed at the ability of the government to initiate an undercover operation or target a specific individual once such an operation has commenced—will hamper law enforcement officials in their efforts to investigate criminal activity at its incipient stage. Requiring law enforcement agents to secure a warrant before the criminal scheme crystallizes or before the corrupt nature of the target is made known could effectively undermine many undercover investigations and place a near impossible administrative burden on law enforcement officials.

But there is a second, more fundamental flaw in such a proposal, a flaw which is even more pronounced if the legal standard for securing such a warrant is less restrictive than traditional probable cause. I question the wisdom of a policy which imposes upon our federal courts the task of approving in advance such government undercover operations. I respectfully suggest that this is not an appropriate role for our courts to engage in; requesting a federal judge to review certain proposed undercover activities, and then give its official imprimatur to such activity, conveys an impression that the court has become an important official arm of the prosecution and that the undercover activity has the blessing of the rule of law.

It is, of course, true that today our courts are called upon to review arrest and search warrants. But in the former situation, the investigation is largely completed; and, although courts are frequently requested to authorize search warrants, such a function is relatively narrow in scope and does not result in the same type of broad scale judicial inquiry that could accompany judicial review of the very nature and purpose of an entire undercover investigation. A requirement that our courts approve certain undercover operations or the targeting of a named individual compels the judiciary to interject itself into criminal investigations at too early a stage.

This argument I am making is not novel; in 1977, during the debate over the Foreign Intelligence Surveillance Act, a similar concern was expressed by critics of the proposed legislation who questioned the wisdom of having our federal courts review electronic surveillance warrant applications when such surveillance was not part of any ongoing criminal investigation and was based on a standard less restrictive than traditional probable cause. The criticisms were overcome at that time on the relatively narrow ground that our federal courts had traditionally passed on electronic surveillance applications and that, in any event, the Supreme Court itself had invited the Congress to fill a serious gap in existing law governing domestic surveillance of foreign agents. A special court was created to process such applications, a court which, I understand, has never rejected a warrant request.

My reservations concerning a judicial warrant requirement should not be read, however, to mean that I oppose a more restrictive standard for commencing an undercover operation or targeting specific individuals. To the contrary, I support such reforms. But I believe that the goal can be achieved without tying reform to the concept of a judicial warrant requirement. We already have in place the Attorney General's Undercover Operations Guidelines which go a long way in this direction. But I tend to agree with critics of the existing guidelines that they are still too vague and inadequate; for example, a detailed procedure should be established involving approval by the Undercover Operations Review Unit of applications for directing undercover operations at any person or group. Such a reform would meet some of the most serious criticisms directed at current practice by those advocating creation of a warrant requirement.

But Mr. Chairman, this issue of targeting individuals in the course of undercover operations is but one important example of a much broader subject—the nature and degree of control of government undercover operations in highly sensitive investigations. I believe that the very initiation of such undercover operations, and their administration and management, in a very limited group of sensitive investigations, requires substantially more prospective control from Washington. I perceive this to be the single most important subject of reform arising out of Abscam; and it is in this area where the Committee's recommendations could have a critically important impact. Who should be in charge of such undercover operations? And who should ultimately be held accountable for undercover operation successes, failures, strategies and techniques? This, I suggest, is the critical issue which this Committee should confront.

I believe that when a "sensitive investigation" is involved—however that phrase be redefined it certainly should encompass undercover operations aimed at members of a separate independent branch of government—critical government undercover operations should be administered and controlled prospectively by the Department of Justice and the FBI in Washington. I reject the idea that in such investigations key undercover operational decisions—such as approval of particular informants, development and implementation of undercover scenarios and strategies and day-to-day supervision of ongoing undercover operations—can be delegated to field supervisors, with the Department and Bureau in Washington retaining only some ambiguous degree of "oversight responsibility." One major lesson we learn from Abscam is that such a system of divided responsibility—at least when it involves sensitive government undercover operations—encourages a lack of accountability and increases the likelihood that field decisions will be made without sufficient input in advance from Washington. All too often in Abscam, officials in Washington only learned after the fact of certain decisions and events occurring in the field. Even then, there was never any serious consideration given to improving the prospective input of Washington when it came to the undercover aspects of the investigation itself.

I question the significance of any reform proposals—however well-intentioned and beneficial—that focus on improving retrospective review procedures by Washington of field undercover operations. I leave to others the important issue of whether existing Department guidelines were violated. I maintain that, in any event, the guidelines themselves, as currently drafted, are inadequate to assure effective management of undercover operations by Washington in highly sensitive cases. Beneficial reform proposals that focus on the *reviewing* process—such as the requirement that Washington be kept current on the status of field undercover operations through the prompt preparation of recording transcripts and FBI reports by field operatives—ignore this more fundamental problem.[1]

When it comes to the very narrow class of cases which fall within a redefinition of "sensitive investigation," the Assistant Attorney General of the Criminal Division and the Director of the FBI should be the persons responsible for approving the conduct of any government undercover operations associated with such investigation. These cases will be sufficiently rare so as not to pose an insurmountable administrative burden on the Assistant Attorney General or the Director of the Bureau. Nor should these cases result in administrative or morale problems on the part of field agents and attorneys. The investigation itself would remain the responsibility of the field operatives; but any undercover operations associated with the investigation would require the prospective approval of Washington.

The current Undercover Operations Guidelines are not satisfactory in this regard because they do not provide for sufficient Washington control of ongoing undercover operation in the field. Instead, ongoing review of undercover operations by the Department of Justice takes three forms: (1) authorization or reauthorization of the operation after six months; (2) authorization or reauthorization when an operation is expected to implicate a "fiscal" or "sensitive" circumstance not contemplated at the outset; and (3) "periodic" consultation with the local United States Attorney or Strike Force Chief or with an Assistant Attorney General. In addition, under the Attorney General's guidelines on FBI use of informants, such informants must be reviewed by field supervisors every ninety days for their "suitability" and for the "pertinence" of the information they are able to obtain.

I respectfully suggest that the six-month authorization period is not only too long, but, unfortunately, deemphasizes Washington's responsibility for the conduct of the undercover operation. Much can happen in an undercover operation during a six-month period that should properly be brought to the attention of the FBI and Department of Justice in Washington even though it may not implicate a new "sensitive" or "fiscal" circumstance. It may be true that undercover operations are not routinely approved for as long as six months. But the guidelines themselves do not provide satisfactory control by Washington of ongoing undercover operations in the field. This is made clear by examining what happened in Abscam. For example, it appears that no official in Washington was ever called upon in advance to approve the background or reliability of the middlemen in order to test the credibility of their allegations. In particular, no one in the Department of Justice in Washington ever reviewed in advance the FBI's "suitability" determination concerning the use of Melvin Weinberg as a key Abscam informant.

Thus, the existing ninety day review period for informants is inadequate, not only because it occurs too infrequently, but because the review process occurs at too low a level. Today, the only effective assurance of ongoing review of the type I am advocating derives from the undercover guidelines' requirement of "periodic consultations" among the Special Agent in Charge and the United States Attorney, Strike Force Chief or Assistant Attorney General "concerning the plans and tactics and anticipated problems of [any] operation" that has been previously approved. But because the frequency of these "periodic consultations" is left unspecified, and the nature of the required consultations is vague, the force of the requirement is substantially undercut.

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[1] Thus, I question the overall significance of statements stressing "the procedural due process which was accorded to every putative defendant" by the Department of Justice in Washington *after* the undercover operation was completed but before any indictments were sought (Prepared Statement of Irvin B. Nathan, July 29, 1982, p. 31). The Department could hardly have done less in the Abscam cases. More importantly, once all the evidence has been collected—by whatever means—it becomes increasingly difficult for government officials at any level of government to ignore clear evidence of corruption and illegality on the part of potential defendants. A perception can develop that such post-investigation "due process" is merely gratuitous, preceding formal indictment.

What are the specific details of my suggested reforms? Preliminary thinking on the subject has led me to three initial reforms. First, when a "sensitive investigation" is involved, the prospective administration of the undercover operations of the investigation become the responsibility of the Assistant Attorney General of the Criminal Division and the Director of the Federal Bureau of Investigation. A detailed field request to initiate an undercover operation or target a particular person or group must gain their prospective approval as well as the approval of the Undercover Operations Review Unit. Although, obviously, assignments relative to the undercover operation must be delegated to field operatives, the latter should be required to obtain advance approval for all sensitive transactions—such as the suitability of an informant, targeting and modification or extension of the undercover operation—except where such approval cannot be obtained without endangering life or limb. Furthermore, whenever advance approval is not obtained, relevant operatives should be required to submit a report within twenty-four hours concerning both the specific transaction and the circumstances surrounding the failure to obtain approval. These approval requests and reports should be transmitted to the Director of the FBI and the Assistant Attorney General, each of whom would be required to consent to any proposed transaction. A copy would also be sent to the Undercover Operations Review Committee.

Second, the Special Agent in Charge of the investigation should be required to submit periodic reports concerning the progress of the undercover operation to the local United States Attorney, the Assistant Attorney General, the Director of the Bureau and the Undercover Operations Review Committee. These reports should describe the progress of the operation, what has occurred, who has been involved, how the undercover agents or cooperating individuals have performed, what difficulties have been encountered, and what steps have been taken to minimize the operation's intrusiveness as it unfolds. If the proposal to require advance approval of discrete undercover operations in sensitive investigations were implemented, it would be sufficient to require the submission of such reports approximately every sixty days.

Third, the Assistant Attorney General or Director of the Bureau could decide at any time to reconsider the undercover operation. In addition, a formal mechanism should be provided to permit any member of the Undercover Operations Review Committee, based upon a recommendation of the Assistant Attorney General or the Director of the Bureau, or based upon approvals sought, reports made, or any other information received, to call for reconsideration of the undercover operation. Such a mechanism would state the circumstances under which reconsideration would proceed, who would be involved in the reconsideration and whether the undercover operation should be suspended pending the conclusion of the Committee's reconsideration.[2]

Mr. Chairman, the thrust of my testimony—that management of government undercover operations in sensitive investigations is in need of reform—was also on the mind of former Assistant Attorney General Philip B. Heymann, when he testified last June before a Subcommittee of the House of Representatives. Acknowledging that he "did not systematically monitor this [Abscam] investigation or any other during [his] tenure as Assistant Attorney General," Professor Heymann went on to state:

"Much has been learned on the management side that can and should help assure that the fundamental concepts involved in the major undercover investigations, including Abscam, are adhered to rigorously. But any past weakness in this regard seems to me to suggest the wisdom of heightened attention to management concerns whenever there is extensive reliance on a criminal informant, not serious doubts about the underlying policy questions raised particularly by undercover techniques."

I am in basic agreement with Professor Heymann on this point. Better management, not substantive changes in policy, is the key issue. But I disagree with his solutions to the problems surrounding management of sensitive undercover operations. To Professor Heymann, the existing division of responsibilities between Washington and the field is basically sound. The specific improvements which he and the Luskin Report advocate—reforms designed to promote, "prompt, but retrospective supervision . . . while preserving the necessary discretion of the agents and attorneys in the field"—would not alter the traditional emphasis placed in the guidelines on review after the fact of decisions made by field agents and attorneys. As Professor Heymann states it:

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[2] I respectfully suggest that the failure of the Department of Justice to comply with its own guidelines should not be litigable. To my knowledge, no Federal court has ever allowed review of a claim against the Department for noncompliance with its own internal regulations relating to the exercise of prosecutorial discretion. But apart from legal considerations, the Federal courts are ill equipped to review investigative strategies and tactics. Given the plethora of intangible factors and subjective judgments involved, I do not believe that the issue of guidelines compliance is susceptible to judicial review. In any event, opening the issue to judicial scrutiny would likely prompt a rash of litigation. It would become routine for a criminal defendant to file a motion challenging application of the guidelines, thereby delaying resolution of the case.

The appropriate remedy for guidelines violations should be internal sanctions, supplemented by some form of civil damage remedy in eggregious cases involving willful violations or injury to innocent persons.

"[I]t is important to make the point that, whatever system of supervision is imposed, it cannot and will not replace the large amount of independence and discretion that must be lodged in the hands of the agents and, to a lesser extent, the attorneys in the field.

"The reasons are obvious. Agents and attorneys in the field are better situated to make the kind of close calls that arise daily in a complex investigation. They have an opportunity to assess the facts first hand, a working knowledge of the investigation that cannot be duplicated through memoranda and briefings, and a familiarity with the investigative terrain and the principal actors. They are also in a position to give the concentrated attention that ought to go with primary responsibility; supervisors in Washington are likely to be involved, more peripherally, with a number of investigations and other matters. Abscam, Brilab, Pendorf, and any number of other investigations, many of which were equally complicated and sensitive, were all going on simultaneously. An ability to respond promptly and to act confidentially also suggests a large measure of field responsibility. Finally, as I believe Representative Hyde suggested at an earlier hearing, field responsibility reduces the concerns that would otherwise be present that policies may motivate a decision affecting elected officials."

I respect this view but do not agree with it—at least insofar as government undercover operations form an important part of a sensitive investigation. Whatever the administrative and practical problems associated with concentrating undercover operations authority in Washington, they are outweighed in sensitive investigations only by the promise of increased accountability of those specific persons in Washington deemed expressly responsible for the conduct of such operations.[3] A major lesson we learn from Abscam is that so-called "supervisory authority" or "oversight responsibility" means different things to different people. Disclaimers of responsibility for certain questionable Abscam conduct generally take two forms: if you are located in Washington, you were not generally involved in the day-to-day decisions but, rather, were concerned only with the "bigger picture;" if you are a field attorney or agent, your day-to-day decisions had the overall blessing of Washington and you were only implementing approved law enforcement policies. As I understand the proposed reforms advocated in the Luskin Report, although Washington's retrospective review of undercover field operations would improve—a position I certainly endorse—basic reliance on field supervision of government undercover operations would remain. Accordingly, the problems of accountability and prospective control of such operations will also remain.

Mr. Chairman, I recognize the concerns which are raised by the proposals I have outlined here today. I suspect that one criticism will be directed at the impracticability of requiring high level officials in Washington to become so involved in day-to-day undercover operations. But if the definition of "sensitive investigation" is narrowly drawn, so that only a handful of investigations fall within the phrase, the practical burdens imposed on officials in the Department and the Bureau should not be that great. In any event, some administrative inconvenience is a price worth paying in order to assure greater accountability and control of undercover operations in Washington.

Of greater concern to me is the argument that concentrating such authority in the hands of one political appointee, the Assistant Attorney General of the Criminal Division, increases the likelihood, or at least the perception, of politically motivated decision-making. It was not so long ago that this very charge was directed, with justification, at various officials in the Department of Justice in Washington.

There are two answers to such criticism. First, my proposals make an important distinction between field control of a sensitive investigation and Washington's approval, in advance, of government undercover operations arising out of such an investigation. Nowhere have I suggested that the entire investigation be transferred to Washington; prospective approval only of the undercover operation aspects of the investigation forms the crux of my recommendations. Any attempt by Washington to politicize the investigation itself would confront the serious possibility of incurring the wrath of field attorneys and agents.

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[3] I join in what appears to be the near-unanimous view that such increased responsibility in Washington is particularly welcome when multi-jurisdictional squabbles involving various law enforcement agencies threaten the effectiveness of the investigation.

Second, and perhaps more importantly, I believe we have learned a great deal about our political appointees in the past decade. The confirmation process is much more rigorous than it once was and Congressional oversight of all federal agencies, not just the Department of Justice, makes it increasingly unlikely that highly sensitive undercover operations can flow from base political motives.

Of course, a fair question remains—given the implementation of the various reforms I have suggested today, would the Abscam investigations have been conducted any differently? Wouldn't the same Justice Department guidelines be interpreted in the same way by law enforcement officials exercising the same discretion? Mr. Chairman, I have thought about the answer to that question for a long time and have concluded that the most serious abuses associated with Abscam probably would have been avoided if Washington had exercised more control over the undercover operations. I believe that Melvin Weinberg would have been removed from the operation much earlier, that the unseemly in-fighting between the Brooklyn and Newark offices could have been avoided, that no "coaching sessions" would have occurred and that indiscriminate targeting would have been minimized. And I believe that "changing the script" in the middle of a video tape recording of Senator Williams' meeting with the Sheik would never have been permitted.

Mr. Chairman, I hope that my testimony today will be of some assistance to this Committee as it attempts to reach some final opinion and make some final recommendations concerning undercover operations.

[6] Mr. KAPLAN. I am John Kaplan. I am a professor of law at Stanford. I was invited by the committee staff because I teach criminal procedure and have taught criminal procedure and constitutional law, and I stand by to answer any questions or do anything I can to help the committee.

I have not a prepared statement, because I was expecting to react to questions from the committee itself. I can say a number of things. One is that I agree with Mr. Feinberg that a change in the substantive law would be a mistake. I side with Thomas Babbington McCauley, who said, "Don't talk to me of reform; things are bad enough already." And if I were sure that we would not make the issue worse, I would suggest certain reforms. I am not so sure, and I think that this is an area which should be left to the courts until it is clear that we can do better than the courts have done.

Similarly, I am against a warrant requirement for either an undercover operation or consensual monitoring, because I think this will just add to the delay and the number of new issues in criminal trials, which I think are somewhat of a national scandal already.

Mr. NEAL. Not if you are a defense counsel, Professor.

Mr. KAPLAN. Not if you are a defense counsel; I tend to agree.

Senator RUDMAN. Our counsel is showing his own particular bias.

[7] Mr. KAPLAN. The one area, though, that I think this committee could perform a useful service in civilizing the criminal justice process is in providing a right of action for people who suffer damage because of an undercover operation. There is a truly shocking example that has been presented to the committee of someone whom the FBI, as it were, testified as to his reliability and set up all of the indicia of reliability and honesty of somebody they knew was clearly a crook, by any standard, and used the FBI apparent authority to victimize people and cheat them out of a good deal of money.

It seems to me that the Government has really taken his money, and in that case, entirely apart from any fault, this is a cost of law enforcement, and it should fall on society as a whole, rather than the poor individual who is victimized.

Coincident with this, I would provide a right of action for nominal damages in the Court of Claims, that would allow an individual who has been dragged into one of these investigations, who feels that his honor has been sullied, and of course, the classic example is your colleague, Senator Pressler, to go to the Court of Claims, get nominal damages plus an adjudication of his innocence—not that the Government behaved wrongly—maybe it did, maybe it did not—but he was innocent and he should have some kind of official recognition in our legitimate institutions that will, as it were, if not compensate him completely, will help ease the sting of having [8] been brought into one of these operations.

The two sides of the coin, then, are if it costs money, the Government should pay it, and if it costs honor, the Government can make it up.

I could go on at some length; indeed, I am more than happy to. But I had hoped that if Your Honor has any questions, I will be happy to talk about them.

Senator RUDMAN. Well, Professor Kaplan, I wish we did have the time. I think we might serve more by possibly having some questions, which I would address jointly to both of you.

I have sat through all of the major what I will call evidentiary hearings that the committee has had, and listened carefully to the testimony of all of those involved. I, like you, Mr. Feinberg, have a strong law enforcement background and tend, of course, to look at things maybe from that particular bias, knowing how difficult it is in the present atmosphere in many cases for law enforcement agencies to function and still maintain the proper safeguards that we are all guaranteed under the Constitution.

Having said that, it seems that this committee is faced with the task, in its final report, of drafting some recommendations—I think we are going to have to draft some recommendations. There are things that cry out for some improvement. Let me just summarize what I gleaned from a number of these hearings in a very brief way, and get you to respond to it, [9] because I have a pretty good idea what the next panel is going to say, from having known something of their attitudes and their testimony, and I want to discuss this with them.

We have a situation here where, no matter what safeguards you want to put within the Bureau, or even if you went beyond that and had some sort of a warrant situation where the criteria would be something different than they presently are—which, I have some serious doubts as to whether that is even possible—but you still have the situation where, as Mr. Weinberg said, in an answer to one of the committee's questions during the closed hearings, he said to the Senator asking the question, a somewhat critical question, he said, "Well, sir, that may be true, but every one of those Congressmen that we had come into that room took money."

Having said that, of course, when you back up from that, the position of the Bureau seems to be that if we have any information whatsoever that a particular public official—or, if you want to put it in the drug area, a particular individual—has a proclivity to commit that crime, then we feel an obligation, once we are involved in this kind of investigation, to test that person. That appears to be their policy. I think Counsel Jim Neal would agree, and Mr. Wheeler would agree, that that is about what we have heard from them, that if there is a statement by someone, an Angelo Errichetti or whoever, then that is what they are going to do; they are going [10] to test that if they are in the field.

Then, of course, you go from that policy to the people that are implementing the policy—the Melvin Weinbergs of this world—who, I think could be fairly said to not be too concerned about crossing t's and dotting i's. I think that is an understatement.

Mr. KAPLAN. I think, Your Honor, you could say that there was not an honest bone in his body.

Senator RUDMAN. Well, you can say that.

Mr. KAPLAN. I have.

Senator RUDMAN. I expect we will have something to say in our report.

Now, looking at this policy and the people who implement it, here is my question. What kind of supervisory safeguards short of warrants do we recommend to the Bureau to insure that what we do not have out here are a group of Angelo Errichettis trying to impress Mel Weinbergs that Harrison Williams or Warren Rudman or anybody else has a "bagman" when he says by his own statement that he never knew that to be true, thus giving impetus to a policy that says when such an accusation is made, go make the test.

And with all due respect to the Bureau's position on my colleague, Senator Pressler, it is my contention that because of public misunderstanding of what goes on in these areas, there are people out there someplace who think Senator Pressler [11] did something wrong, when Senator Pressler did nothing wrong at all. All he lost of course, as he says, was part of his reputation, which is a very interesting statement, because that is all most of us really have.

Would you respond to that? What do we do about this conflict—this policy, on the one hand, and the kind of people who implement it, short of the warrant approach, which I expect the people from the ACLU may well suggest today.

Mr. FEINBERG. Let me answer that in a few ways, Senator. First, I do not think a warrant will solve that problem, as long as you have human beings who have to interpret the law, whatever the law is, and have to exercise discretion, whatever that discretion may be, or however narrowly you want to draw that discretion, through guidelines or warrant requirements. In the end, as you know, I think, Senator, probably better than any other Senator on this committee, with your background, there is no substitute for law enforcement discretion, good judgment in the exercise of that discretion. So I think the warrant requirement—and the reason I am against that is, it is a red herring. It will, administratively, I think, tie up the system, but it will not really resolve it. You will have a judge exercising his discretion, at an earlier stage, I might add, than would normally be the case with all the pitfalls that that would lead to.

No. I think the problem that you focus on, Senator, can [12] best be addressed by somehow encouraging through recommendations that the people who man the front line in terms of accountability, at the highest levels of government, when an informant comes back, or when the FBI comes back to the Assistant Attorney General in charge of the Criminal Division and says that informant "X" says that the middleman can reach Senator "Y", then that Assistant Attorney General, who is subject to the confirmation process and the oversight responsibilities of Congress, that Assistant Attorney General, then, has to make a discretionary judgment, and that judgment has to be is it a blowhard talking, can we back it up with any facts of corruption. It is not enough that he says it. Send the informant back. Let us see if he raises it a second time, the middleman, and in what context, and let us evaluate it then. And if it turns out that there is a pattern of incorrect innuendo or incorrect hyperbole, then you realize, I think, that the middleman is more puff, more smoke than fire.

Senator **RUDMAN**. What you are really saying, then, is to put that discretion at a level that you would use as a prosecutor, that I certainly use as a prosecutor, that when an unreliable informant made an accusation, you always required corroboration.

Mr. **FEINBERG**. Well, that is right. Now, the corroboration might not be independent——

Senator **RUDMAN**. I understand that. I did not say [13] independent corroboration, but corroboration.

Mr. **FEINBERG**. That is right. And just one final point. I especially believe this to be so—and I hope that the committee will recognize the distinction between investigations like Abscam and your traditional narcotics investigation. I am talking about putting a special burden on the highest level criminal justice officials in the Federal system, when the investigation involves the kind of sensitive investigation that we have in something like Abscam. As a general rule, I would not think it would be necessary, but in cases like this, I do.

Senator **RUDMAN**. I agree with that, Mr. Feinberg. I know that in the course of his work in behalf of Senator Williams on the floor, Senator Inouye—who deserves, I think, just incredible credit for taking on that obligation, and it was an obligation, because everyone is entitled to able representation even though it is on the floor of the Senate—made the comment in argument that what we had here was a potential for a very special kind of terror waged by the executive branch on the legislative branch, and in the hands of the wrong President—and memory does not have to go back terribly far to be able to come up with that kind of a scenario—there could be some very serious results that would flow.

So, what you are essentially saying is that you want to buck the responsibility up to a place where they cannot shift [14] it, where the people up at the top say, "Well, they were doing it," and the people down in the field say, "Well, they knew all about it," which is essentially what we heard.

Mr. **FEINBERG**. Especially since it is the people at the top that have been confirmed, that are expected to be the very best people we have available. And I suppose the word that I would use, Senator, in counsel trying to develop some sort of dynamic recommendation would be "pattern." If the pattern is such that the middleman cannot be trusted, or the evidence seems to show that he seems to be going off on his own, so there is a pattern of sort of a Weinberg taking over and running rampant, that is when I think particularly is the requirement we are talking about.

Senator RUDMAN. Professor Kaplan?

Mr. KAPLAN. Senator, it seems to me there are two issues here. One is, at what level should these things be approved, and the other is what corroboration you want out of an unreliable middleman. With respect to the height at which these should be approved, I completely agree with Mr. Feinberg. It should be at the highest level possible. The corroboration requirement gives me more trouble, because frankly, an uncorroborated report as to a U.S. Senator should be investigated.

Senator RUDMAN. I agree with you. The question is, at what level is that decision made, however.

[15] Mr. KAPLAN. Yes, but the point is, the corroboration should not be mixed in with the height of the——

Mr. NEAL. Well, Professor, to be investigated begs the question how do you investigate. But let me ask you a question. First, we are not talking about going to a magistrate to get a warrant to start an undercover operation, No. 1. And No. 2, we are not talking about not further investigating. But what would be wrong—and I will take the devil's advocate position; it does not indicate, really, how I tilt—but what is wrong with having, since you cannot conduct these operations without using certain techniques, that is, consensual electronic surveillance, for example——

Senator RUDMAN. If counsel will yield, we will stand in brief recess while I go to the Capitol and vote and come back.

[Short recess.]

Senator MATHIAS. The committee will come to order.

First, let me thank Senator Rudman for filling in. We have had an unexpected and unfortunate interruption, and I think we cannot guarantee that further interruptions will not occur. But I am very grateful to both of our witnesses for being with us and to Senator Rudman for carrying on the meeting.

I understand Senator Rudman was in the process of asking some questions, so let me urge him to go forward with that.

Senator RUDMAN. I wanted, in light of your response, to [16] just hypothetically propose something to you that I have been thinking of—I have not reached a final conclusion in my own mind—but following what particularly you have said, Mr. Feinberg, and to some extent what you have also said, Professor Kaplan, what do you think of a procedure in which decisions to commence undercover activities of a very sensitive nature—and we will have to define sensitive nature not today, but we are talking of a broad concept—could not be delegated by either the Director of the Associate Director of the Bureau, because we find in the Pressler case, for instance, I have very serious questions as to how much thought Director Webster really had to give to that—maybe through no fault of his own, but that happens to be the fact of the case. I guess what I am suggesting is that the whole idea of a warrant, a probable cause hearing, all those things wrapped into one, but in an administrative procedure within an agency at the highest levels to insure that people of sound judgment who are responsible within an administration make those decisions, rather than having them made at a level that really is not nearly as accountable, and when you start doing an investigation like this after the fact, it is amazing how difficult it is to follow the lines to find out where the decisions in fact were made.

Mr. KAPLAN. I have several reactions to that, sir. One is that if this were the only decisions committed to the head of [17] the FBI that he had to make, perhaps it is an important one and should be done. But my guess is that over time, more and more decisions will be required to be made by him so that as a practical matter, it simply will not get decided if there are too many things he has to do, and that may be a reason to require it be decided at a higher level, but not at the very highest, like one of three Deputy Directors, perhaps, could do it.

The second is, I again want to separate the corroboration requirement from the height of the official deciding it. I want to consider a great deal more what kind of corroboration should be required, and even if any. And my problem is this, sir, that I think of all citizens in the society, the people who are most appropriate to be tempted by Government and even to endure this humiliation and loss of representation are the elected representatives of the people. In a sense, we can tolerate drug pushers, we can tolerate con men, but the legislative representatives of the people should be above suspicion at all times. I am not even addressing myself to the political implications of trying to make special rules which will be seen to protect legislators, but I am going to a more fundamental point of view. Legislators and policemen, the people who enforce the law, should be the people who give up, as it were, the most to make sure that they are trustworthy in a society which may be less than trustworthy overall.

[18] Senator RUDMAN. I think that your answer as far as it goes really cannot be seriously argued with on any basis of which our history has been written, but you have to take it, I think, one step beyond that, and the step you have to take is that we are looking at the world as it is, we have to look at the city as it is, we have to look at the history of government as it is, and we have to recognize that we might have a tool here that at some future point could be used with enormously serious effects against the national interest by a ruthless administration that absolutely decided that it had an objective that was so important, so worthwhile, that anyone who opposed it in the national interest somehow had to be gotten out of the way—like a war in Southeast Asia, for instance.

Mr. KAPLAN. Yes, I agree. Your Honor, it seems to me that even the judicial decisions on entrapment allow for the concept that the selection of Representatives on political grounds would be something that the courts, I would hope, and frankly, believe, would not stand for, and that therefore, the vindictive prosecution cases and various other cases would be the only kind of shield that would be practical in those cases at all, because the discretionary areas by definition will not work. You are going to need the courts.

Senator RUDMAN. And that, of course, is true except, perhaps, when the shield starts to break down, and the people [19] who are doing the moving are the Angelo Errichettis and the Melvin Weinbergs, who are totally insulated from the responsibilities of the Bureau. And that is the almost Hobsen's choice that we are facing here in trying to resolve this. So I appreciate your comments. I think they are very good comments, and I think you both have been very helpful.

Mr. Kaplan. By definition, sir, there is one point I would like to make, that when you have the Melvin Weinbergs, they are exactly the kinds of people who are not doing it for political reasons; they are doing it for the crassest of personal reasons. In a sense, it is just as demeaning, but it is less of a threat to the ultimate democratic institutions. It is only when the people in politics start using this thing, and then you have the exact opposite of the Melvin Weinbergs, and then you have to rely on the courts.

Senator Rudman. Well, I would say, Mr. Chairman, that Professor Kaplan's point is very well-taken. Of course, my concern is that people like we have seen before this committee, and people I have dealt within my prior occupation, there are those who would say anything for an amount of money, who would perger themselves, who can be put into motion. I remember the Lawrence case in Vermont, which has become very famous, which cost the attorney general there his job, where a long series of drug investigations against college students in that State finally proved out that the people that were in [20] fact supposedly informants were involved up to their armpits in an activity that was illegal, and yet they were the agents of law enforcement, and it was only through a lucky break that the courts of that State finally recognized what was going on. And that is what concerns me in this kind of case, as I hear this testimony.

Mr. Kaplan. I agree, but the interesting thing to me, Your Honor, is that that was one area where it could just as easily have been done by the crooked law enforcement agents having nothing to do with entrapment. What they were really doing was just lying about people. And if the police can lie and be believed, there simply is nothing we can do about it; that is what we have to rely on the courts for. And the second thing that is interesting about that case is the man was only caught through entrapment. It was entrapment that actually caught that police officer, and that is why we know about it today.

Mr. Wheeler. Mr. Kaplan, let me go back to the corroboration issue for a moment, though. Why is it that we could not require—it does not have to be by statute, it does not even have to be by guidelines, necessarily—but why shouldn't there be a requirement that the FBI, when a known corrupt middleman says that public official "X" will take a bribe, why isn't it that there should be some type of requirement within the FBI that the FBI, either by an agent or an informant, makes some [21] type of a *Spinelli* or an *Aguilar* series of questions to try to make sure at the very least that this corrupt middleman in fact knows what he is talking about because, for example, in Abscam, there were several instances in which it was clear—after the fact—that the corrupt middleman had mentioned a Congressman or a Senator and had never ever met the person, and all it would have taken was a question such as, "Oh, is that the red-haired guy from Connecticut?" and the middleman would not have been able to respond. And as the ACLU's paper points out, I think a very nice, very recent example, as you know, an ex-Senate page alleged that the use of cocaine and sex among pages and Congressmen was rampant, and it turned out after the fact, after tremendous publicity, that he was lying. Could the FBI, or should the FBI have been allowed, on the allegation of that ex-page, to somehow try to prostitute or sell cocaine to Congressmen, and wouldn't it have been a terrible thing had it occurred?

Mr. KAPLAN. It would have, and there is simply no way as a practical matter you could have prevented that. First of all, I think the guidelines should provide that reasonable inquiry should be made. But no, if you say something like, "Is that the guy with the red hair?" you may blow the investigation right out of the water. They may know something phony is going on.

Certain discrete inquiries should be made, but there may **[22]** come a situation where the middleman, corrupt as he is, says, "Look, I know this is true, but I can't tell you how I know because the big boys will be after me." Now, his "big boys" may be 3 and 5 years old, and you do not know. But especially when dealing with, as I say, law enforcement officers and political officials, these things have to be investigated unless, with relatively simple investigation, they can be shown to be groundless. The page situation could not have been shown to be groundless without enormous investigation and difficulty. These things happen in a society. They are terrible things. But the alternative of, as it were, holding back and not investigating them would in fact have been worse, because 5 years later, this would have surfaced; it would not have been investigated, and the rumors would have continued to blacken the name of Congress.

So in short, I think that is part of the problems of living in a civilized society. You are going to have to take these investigations that are set in motion by corrupt middlemen. There is nothing you can do about it that will not throw out the baby with the bathwater.

Mr. FEINBERG. I am not sure I would go that far——

Mr. NEAL. Could I interrupt you there, to finish up the question that I started to ask. We are not talking now necessarily about probable cause or reasonable indication to commence an undercover operation—at this point, I am not—and **[23]** I am not talking about all undercover operations. Let us talk about what is really difficult, and that is the part of an undercover operation that the FBI calls "the creation of the opportunity to commit a crime." OK. It seems to me that is the problem. Now you are getting ready to bring a man before a camera, or you are getting ready, to offer him an opportunity to commit a crime. That is going to involve the use of electronic surveillance.

Now, what is so difficult about going for a magistrate's approval to do that specific thing? In some States, as you know, that is required. Now, why is that bad? Are you saying that the States should not require that? Are you saying they are wrong and we are right in not requiring that? What is so hard about that?

Mr. KAPLAN. I would have to know how the States went about enforcing it. But one of the problems, or maybe advantages of the Federal court system is that they practice what they preach. And if you have a warrant requirement in every criminal case where this happens, you are going to have a motion to suppress on the ground that the warrant was improperly issued; the motion to suppress is going to take further judicial time and energy. It is going to be used as a discovery motion by the defendant. And, being quite honest, we have more than enough of these in our criminal system today.

If you could rewrite the whole criminal system and just [24] take out and put it in order of importance, this might be more important than some of the things we already have. But that is not the issue. The issue is should you add one more.

Mr. **Neal**. So because we have got some impediments, this might be a more important impediment, and let us do not add a more important impediment to some of the insignificant impediments.

Mr. **Kaplan**. Well, the straw that broke the camel's back may have been a very valuable and worthy straw, but it still was more than we could——

Mr. **Feinberg**. Counsel, if I may give a quite different reason why I would be against that type of warrant requirement. The argument I am making now has really nothing to to with the impediment it will place on the criminal justice system, the rash of litigation, motions to suppress. I think there is a more fundamental reason that gives me pause, and that is, I am not at all sure that we want our Federal courts to become in effect an arm of the prosecution at that early stage of a proceeding by authorizing warrants to engage in that type of undercover operations. This issue came up in a related sense in 1977, when Senator Mathias and others were pushing to enact the Foreign Intelligence Surveillance Act. And the question arose whether or not you want to ask courts to in effect place their imprimatur at an early stage of a proceeding on Government activity—in this case, electronically surveilling [25] foreign agents. And there was a great deal of discussion. Now, in that case, it was finally decided to be all right because the Supreme Court had left the gap open to be filled in the *Keith* case in the area of foreign intelligence. But I have got grave reservations myself, asking courts, before there is any real crystallization or sufficient crystallization of clear evidence of a crime for the courts to be saying, "All right, Government, it is all right to go ahead and do this," on the basis of some standard, whatever it might be, less than probable cause to commit a crime or to secure an arrest, and I think that is really a problem.

Mr. **Neal**. I read your statement, and I can understand that statement if you are talking about getting permission from the judiciary to start an undercover operation, one that is unfocused. All you have got if you are operating, at best, you have got a reasonable indication of a pattern of criminal activity in a sector of the country, let us say, and you do not really know who is involved. I can understand that. But we are talking about getting to the point now where you are ready to offer a man an inducement to commit a crime, where you bring him in before the camera. And the problem we have had here in this study is that every time you talk about this, and you talk about the uncorroborated middleman—and I say that the record in Abscam is not so good. Not everybody who came in took a bribe; indeed, it is about 60 percent good. The [26] guidelines that are used are guidelines after the man is already in front of the camera. And those guidelines—speaking for myself, at least—it seems to me those guidelines that make sure you do not probably get an innocent man convicted are not bad. It is the problem with the guidelines before you get him there that bothers me.

Mr. **Feinberg**. And of course, I have stated that I would deal with that problem a little bit differently, or maybe supplementing your view, in terms of who you were to get——

Mr. **Neal**. But all I am saying, Mr. Feinberg, is you get good men in Government; good men in Government is always the answer——

Mr. **Feinberg**. Don't minimize that, Counsel.

Mr. **Neal**. Oh, I do not minimize that, but I know it does not always happen, and so you need systems.

Senator **Mathias**. Well, thank you very much, gentlemen. Let me just say to Mr. Feinberg, I think he made a good point in the early part of his statement about the function of this committee, that we have really a function to consider policy. And I wanted to assure him that we are well aware that that is our function, and that that is what we will be wrestling with from this time forward.

Mr. **Feinberg**. Thank you. Nice to see you again.

Senator **Mathias**. Thank you.

Senator **Rudman**. I want to thank both Mr. Feinberg and [27] Professor Kaplan. Their testimony has been excellent and very helpful.

[28] Senator **Mathias**. Our next witness is Jerry J. Berman, legislative counsel for the American Civil Liberties Union.

STATEMENT OF JERRY J. BERMAN, LEGISLATIVE COUNSEL, THE AMERICAN CIVIL LIBERTIES UNION

Mr. **Berman**. Senators, I am Jerry J. Berman, legislative counsel for the American Civil Liberties Union. For the last number of years, I have worked on investigative issues here in the Congress. I worked on the Foreign Intelligence Surveillance Act and its enactment. I testified and prepared extensive testimony on the FBI charter, which is pending before the 96th Congress. This is an area where, to the extent that we have expertise on guidelines and procedures, this is one of them.

We honor the invitation to appear here today to testify on FBI undercover operations. We believe the hearings are of enormous public importance. Undercover operations are intrusive investigative techniques, and——

Senator **Mathias**. Mr. Berman, if I can trespass on the years that we faced each other across the table, may I suggest that, without objection, your full statement be included in the record.

Mr. **Berman**. Yes.

Senator **Mathias**. Then, that leaves you free to emphasize the points that you wish to.

[29] Mr. **Berman**. I would like to do that. As you know, I have prepared an extensive statement for the record, based on almost a total review of the Abscam record. We did that, and we went into a great deal because we do make recommendations for changes in standards. We strongly recommend legislation. We favor civil remedies for victims of unauthorized undercover operations, and it seemed to us that in order to defend those standards and those changes and to make those recommendations and not appear to just be flying in the sky, that we would have to nail it down to this

record. And this excellent committee record and the record of the Edwards committee have made clear that the standards in Abscam which are now incoroporated in the current Attorney General's guidelines are insufficient and inadequate to protect the innocent from involvement in such intrusive schemes.

If we begin, I do not think that the public has focused on this side of Abscam. Its vision in the public mind is of Senators and Congressmen coming before the cameras and taking bribes. They do not realize that it was a 60-percent success rate and a 40-percent failure rate, that a number of Congressmen were caught up in this, that it was not just Senator Pressler, and while we are protecting the privacy of a number of them, and I think I know who A, B, C, and D are, it detracts from public understanding of how wide afield [30] Abscam went, that it did include chairmen of major committees in the Congress, and on the record, Congressman William Hughes of New Jersey, who has talked about the price of Abscam, even though he never came to a meeting. Senator Rudman mentioned the "radiation attack," which Senator Pressler feels that he will carry this for the rest of his life, and then Congressman Hughes said the same thing to Director Webster in his testimony before the House. And he asked this central question: "Where was the reasonable suspicion that involved me, Bill Hughes? What did I do to get myself caught in the scum of Abscam?" And a number of other Congressmen and individuals can ask that question. In fact, the answer is that the FBI did not follow a reasonable suspicion standard in Abscam, it is not required by their guidelines, and the safeguards that they did employ, they either did not follow in a way I think a reasonable person would interpret that they be followed, or they failed to protect the innocent from involvement.

This committee has made quite clear that Abscam went through three phases. Senator Rudman often asked, "Based on your guidelines, what was the factual predicate? What was the factual predicate of criminal activity that brought these people into these meetings?" And the witnesses have testified, particularly based on the safeguards outlined by Professor Heymann and former Assistant Attorney General Heymann, in [31] testimony after Abscam, that three or four safeguards were employed: one, that there was a pattern of ongoing criminal activity that they had an indication of, that people were engaging or likely to engage in that conduct; second, that they made the bribes clear, and they made them realistic, and they came in with the fourth safeguard, which was that the middlemen were told to tell everyone that when they were brought to a meeting, it was for a corrupt purpose.

As the record clearly shows, the pattern standard failed to protect. First of all, there is evidence on the record that there was no pattern of criminal activity to justify the shift of Abscam from a sting operation to a focus on political corruption in New Jersey. The FBI and Justice Department say that that happened in November or December when Angelo Errichetti would engage in a corrupt transaction, and middlemen had pointed in that direction, but there is evidence on the record that Mel Weinberg, the leading cooperating witness and informant, was approaching and raising the approaching of politicians in September and October in contact with middlemen, before you could ever say that there was a pattern of criminal activity pointing at New Jersey politicians.

It was even more troubling the following July, when they shift, either on July 14, when Weinberg comes up with the asylum scenario, or on July 26, on the boat, *The Left Hand,* that they come up with the asylum scenario, which involves the [32] targeting of Congressmen. What did they know at the time? They had Senator Williams involved in a New Jersey corruption scheme possibly involving the titanium mine. But they had absolutely nothing else. They had Errichetti mentioning Michael "Ozzie" Myers in a conversation in March, but he had mentioned that name and a number of others, but Errichetti had proved unreliable and had brought people to meetings who did not know why they were there. They had no other mention of a Congressman. As I think several Senators have pointed out, they had mentioned the *Helstoski* case, which occurred in 1976 and not in 1979 or 1980. It involved possible immigration favors in the Congress, but that is the only case in 200 years before the Congress. If that is a pattern of criminal activity, that means every institution is an ongoing target under the pattern standard that they thought they were employing.

So there was a second standard that they employed, and that was the targeting of particular politicians once the operation was underway. And there, the Bureau and the Justice Department officials have made it quite clear that they did not follow a reasonable suspicion of crime standard or the full investigation standard under the guidelines. They instead adopted an alternative, which was to try to structure the opportunity to give them a reason for believing that whoever was coming in was going to engage in a corrupt transaction [33] and that involved relying on the middlemen to go tell these politicians that when they came in, it was for a corrupt transaction. And there was a self-interest, they argue, that the middlemen would always bring in the corrupt politicians for fear of exposure, retribution, and so forth. The committee's report in August totally demolishes the self-interest standard. Our look at the record demolishes that standard. It simply did not work. All of these middlemen violated it repeatedly. And I think that Errichetti did it on several occasions. Joseph Silvestri proved wholely unreliable and brought a number of politicians to meetings who did not know why they were there, who had been lied to, who thought it was for legal purposes. And I think it was clear that that self-interest standard could not work. There was an incentive to bring in politicians, which outweighed the risk of possible exposure.

The second was that there was an incentive to lie to the politicians and say it was for an innocent purpose, because later, if the politicians blew the whistle, they could plausibly deny knowing what the purpose of that meeting was.

"I thought it was for a political contribution."

"Did they offer you a bribe?"

"I knew nothing of that."

I think that the committee counsel has also pointed out that they could count on Mel Weinberg not to make an unequivocal [34] bribe offer, and finally, that retribution might have been a basis for self-interest, but there was no retribution. No one was admonished when they brought an innocent politician, no middleman was terminated.

So the results are that out of these two standards, these two safeguards to protect the innocent, neither of them worked, and a number of politicians were brought in where there was no reasonable belief to believe that they were predisposed to engage in corrupt transactions.

Now, based on that record, we believe that there is a strong case to be made for changing the standards and the guidelines, and not simply in guidelines, but in legislation. Let me run through our recommendations.

Our first recommendation is that the FBI should only be able to initiate an undercover operation if it meets the full investigation standard in the Attorney General's criminal investigative guidelines. That requires facts or circumstances that reasonably indicate that a Federal crime has been, is being, or will be committed.

And finally, in creating opportunities for crime, they should have facts or circumstances reasonably indicating that the operation will detect criminal activity of a type or pattern that is occurring. These changes are significant because under current guidelines, they can open and target an undercover operation on the basis of a mere allegation. This **[**35**]** would require a use of the *Spinelli* and *Aguilar* test of reliable information. It would require the FBI and the Justice Department to probe the reliability of the middlemen, to probe Weinberg, before they could initiate this investigation, to find reliable, concrete evidence why they had a pattern of criminal activity to open this investigation.

Now, if the full investigation standard were enforced, I think that the FBI could have met the standard. It would have required more work. It would have required talking to Weinberg, probing Rosenberg, finding out what Errichetti had in mind, recording the 4½-hour unrecorded Weinberg-Errichetti conversation where he made his list. It would have been much more difficult to justify the pattern of activity which justified the investigation of Congress. There, as I have pointed out, there was almost a dearth of information of ongoing or likely criminal activity which would justify the shift to the asylum scenario focused on Congress.

Now, Justice Department figures and FBI people argue that this would blow the cover if we went into this kind of probing and questioning. But we think it is absolutely consistent with cover. The sheiks and their representatives had no more reason for trusting those middlemen. They needed to probe those middlemen, because if those middlemen were bringing in politicians they did not know, the politicians might blow the whistle, and the sheiks would be in trouble. **[**36**]** So out of a sense of caution consistent with their cover, they could have done this kind of probing.

Now, without this kind of standard, I think that what you justify is fishing exhibitions, and you can open undercover operations and target people on the basis of unsupported allegations. Counsel mentioned the example that Irv Nathan gave, that based on an allegation in the page case, he would find it appropriate to go and target a Congressman and maybe sell him drugs to see whether the allegations of the former page checked out. Well, the FBI did not follow that procedure. It went to the page and investigated him and found out how reliable his information was. They interviewed him, and when they found out that he was lying, that was the end of the investigation. I believe the FBI proceeded under a reliability information test, and that they could proceed in that fashion in Abscam. Unless the standards are changed, I think that the Nathan example is quite appropriate and authorized under the current guidelines.

The second recommendation is that in order to make this standard effective—and I think it has been mentioned by several witnesses—any application for a modification in an undercover operation must be reviewed prior to its being allowed to go forward by the Undercover Operations Review Committee.

Under the current guidelines, what happened in Abscam [37] could happen again—an investigation started at the low level without the high level review, and under the current guidelines, if sensitive circumstances, like a politician, becomes involved, they have to notify Headquarters, but they can proceed with the investigation without stopping right there in their tracks and saying, "What is going on here? What is the basis for this investigation?" So, under the current guidelines, you could again have Weinberg making a number of contacts with politicians before the Justice Department was fully aware that they may not have had the pattern standard met.

The second major test is that once an undercover operation is underway, we believe the standard that must be employed is that, in order to target a person or group in that operation, there has to be again reliable information that they are engaged or likely to engage in criminal activity of the type under investigation. And I believe again, this involves the probing of the middlemen, the testing of independent evidence, the look at informants, the kind of *Spinelli-Aguilar* test that has been mentioned before.

We think that this kind of probing under a full investigation standard would not blow cover, and it would not overturn the Justice Department's argument that we have to have a neutral principle operating here. To get involved in reasonable suspicion is selecting and maybe targeting [38] politicans. We believe that if these standards are spelled out in the regulations and applied evenhandedly, there would be no charge of selectivity possible. We believe the most neutral way to enforce a targeting standard against individuals is the judicial warrant requirement. We believe that infiltration and creation of opportunities are clearly not covered under the fourth amendment according to current judicial interpretation. We have argued, and James Q. Wilson has argued, and others have argued that a warrant requirement can be required; it was done with the Foreign Intelligence Surveillance Act. Of course it will be a burden on law enforcement, but we do not think it should be dismissed out-of-hand because it creates such a burden. Infiltration and undercover agents create the kind of invasion of privacy which we think the fourth amendment was designed to protect, and if there is a new burden, the fourth amendment itself is a burden, and that is the price you pay for protecting civil liberties in a democratic society.

However, we are not simply wedded to a warrant requirement. We know that there may not be votes for that in the Congress. So at the request of the committee, we have considered an alternative, which instead would require that before you authorize a bribe payment, that it would be done through, at least at minimum, the Undercover Operations Review Committee structure already under the guidelines, so that a standard [39] where they would provide the substantial facts or circumstances which indicate that the subject or subjects are engaging or likely to engage in criminal conduct would be presented to that committee, and that committee would authorize, and then the Director would review and agree to that authorization. I think Mr. Feinberg suggested that. I think it is a way of arriving at an independent review without going to a warrant requirement.

Our final point that I will make in oral testimony is that the basic standards and controls cannot be left to guidelines. There has to be statutory change and statutory standards in order to control undercover operations.

First of all, you cannot rely on current law to protect the innocent, because the courts have given the Government wide latitude to offer inducements of criminal activity and to engage in undercover operations.

Second of all, guideline changes by themselves are illusory. First, they are subject to change at any time. For example, the FBI is right now thinking on changing its domestic security guidelines all around—guidelines promulgated in 1976—in order to loosen restrictions on surveillance, guidelines at that time responsive to the extensive congressional documentation of FBI spying on lawful political activity. Second, and equally important, the controlling interpretation of executive guidelines remains at the [40] executive branch. The guideline standard which may appear strict to the outsider, like pattern of criminal activity, turns out on internal interpretation to mean not very much at all; unsubstantiated allegations meet it. Legislating basic standards—not every detail, but basic standards—locks the guidelines in place, provides the executive branch and the Congress with the opportunity to develop a legislative history to explain the meaning and application of the standards, a consensus of meaning that can be used for purposes of both executive guidance and congressional oversight.

Mr. Chairman, this concludes our testimony on FBI undercover operations. We hope that out of these hearings and the committee's deliberations, a consensus will develop around the wisdom of enacting an investigatory charter for the FBI to govern undercover operations and other FBI investigative techniques.

Thank you for your time. I am sorry that it took longer than testimony should, but we had a lot of ground to cover, and I am prepared to answer any of your questions.

[The following was received for the record.]

TESTIMONY

OF

JERRY J. BERMAN, ACLU LEGISLATIVE COUNSEL

Mr. Chairman and Members of the Committee:

On behalf of the American Civil Liberties Union, I am pleased to honor the Committee's request to testify on FBI Undercover Operations. The ACLU is a nationwide non-partisan organization of more than 250,000 members whose sole purpose is the protection of individual rights and freedoms under our Constitution. In this regard, the ACLU has an abiding interest in law enforcement investigative practices and techniques as they impact on civil liberties. On a number of past occasions, we have testified on FBI investigative standards and procedures, most recently in connection with the proposed FBI Charter (S. 1612) which was before the Senate in the 96th Congress.

Introduction

The Committee has asked the ACLU to focus on the existing guidelines governing the conduct of FBI undercover operations; whether those guidelines are adequate to protect privacy and other individual liberties; and whether the guidelines should be codified in legislation.

Our principal concern and the subject of our testimony today is the FBI's guideline standards for initiating and conducting undercover operations and for targeting persons or groups for investigatioon in particular operations. We do not discuss in any detail FBI rules governing entrapment which come into play after a person or group has been targeted for investigation or the entrapment defense. While it is obviously important to protect the innocent from government overreaching or undue inducements once they have become the targets of an undercover operation, we believe the principal aim of guidelines and procedures should be to establish procedures for determining who becomes the target of investigation in the first place.

To determine whether the current investigative guidelines for undercover operations are sufficient to protect civil liberties, we reviewed the conduct of the Abscam Undercover Operation with particular attention given to the investigative standards and procedures employed by the FBI. 1/ We have also examined the current Attorney General Undercover Operations Guidelines. Although they were promulgated after the completion of the Abscam investigation, 2/ Justice Department and bureau officials have testified that the substantive investigative standards followed in Abscam are embodied in these guidelines. 3/

Based on our review, which included the record of both this Senate Select Committee and the Subcommittee on Constitutional Rights of the House Judiciary Committee (hereinafter the Edwards Committee) which also is conducting oversight hearings on FBI undercover operations, 4/ we have reached the following conclusions discussed in detail below:

> First, the FBI did not adhere to its own standards in conducting the Abscam investigation.
>
> Second, the standards, to the extent they were followed, do not protect adequately the innocent from being the targets of undercover operations. Too many innocent public officials were targeted for bribes and/or brought before video cameras for bribe offers.
>
> Third, the guidelines need to be changed to require the FBI to determine that there is an ongoing pattern of criminal activity before initiating an undercover operation to mirror the illegal activity and to require that before targeting a person or group in a particular undercover operation there be reliable evidence indicating that the person is engaged or is likely to engage in criminal conduct.

> Fourth, the FBI should be required to obtain independent authorization to use undercover operatives for purposes of testing a person's criminal predisposition or for covert infiltration of an organization. The ACLU recommends a judicial warrant requirement based on an objective standard sufficient to indicate that a person has engaged, is engaged, or is likely to engage in criminal conduct of the type under investigation.
>
> Fifth, in addition, a person who suffers invasion of privacy or injury to reputation because of an unauthorized undercover operation should be able to bring a civil damage action against the government.
>
> Finally, additional procedures and controls need to be developed to insure proper supervision over undercover operations.

We firmly believe that the substantive investigative standards and ancillary mechanisms to control intrusive undercover operations need to be enacted into law, preferably in the context of an overall investigative charter for the FBI. As we stated in our testimony on the FBI Charter proposal (S. 1612) in 1979, these standards are not constitutionally required under current case law and thus it is up to the Congress to provide such additional protections for civil liberties. 5/ Guidelines, however strict, can be modified with the stroke of the executive pen or by executive reinterpretation. Legislation places the guidelines on a more firm foundation and legislative history can set forth how the substantive standards are to be interpreted. Moreover, ancillary mechanisms, such as civil remedies require legislation.

At that time, Congress neither adopted our recommendations nor enacted the FBI Charter. If members of Congress today are distressed by the investigative standards employed in Abscam, they should not be surprised since those standards -- including the targeting of undercover operations against persons based on less than a finding of reasonable suspicion of criminal activity — were contained in the FBI's charter proposal. 6/

We hope that the lessons of Abscam and other undercover operations reflected in the record of this and the Edwards' Committee finally will convince a bipartisan majority of the wisdom of enacting an FBI charter to control this and other intrusive bureau investigative techniques.

This is all the more urgent because of the FBI's expanding reliance on this intrusive technique in recent years and the promise of future increases now that the FBI has taken on drug enforcement responsibilities. As Senator Mathias stated on the first day of these hearings, the FBI, with a few exceptions during World War II having to do with espionage investigations, did not employ the technique until 1972. 7/ It is well known that J. Edgar Hoover disapproved of this investigative method prefering to rely on overt agents and covert informants to detect crime. 8/ However, beginning with fencing "sting " operations, the post-Hoover FBI began to use the technique. Up until 1977 there were few opeations, mostly sting operations focusing on stolen property and fraud. In 1977, the FBI began to go into high gear, requesting $1 million from Justice appropriations for operations -- the first such request -- and conducted 53 operations together with 20 other local-federal operations financed with LEAA funds. 9/ Since then, the use of the technique has expanded dramatically. As Senator Mathias stated for the record:

> As contrasted with the statistics for that period, during the four-year period 1978 through 1981, the FBI approved and

> initiated approximately 1,200 separate and discrete undercover operations, many if not most of which involved multiple subjects or targets. . . So, we went from approximately 50 a year to almost 300 a year on the average. 10/

Undercover operations are not limited to public corruption. As Oliver B. Revell, Assistant Director of the Criminal Investigative Division of the FBI testified:

> Indeed, the bureau has now or has in the recent past had operations directed at terrorists, organized crime families and other structured criminal enterprises, embezzlement, theft and/or sale and distribution of technological information, automobiles, jewelry and precious metals, heavy equipment and narcotics. 11/

After setting forth the lessons we have learned from our review of the record of Abscam, we will set forth our specific recommendations for controlling undercover operations and state in more detail why we believe these recommendations must be embodied in statute in order to establish meaningful substantive standards and procedural safeguards.

The Lessons of Abscam

While Abscam indelibly etched on the public mind the image of congressmen selling the public trust before video cameras and a solid record of convictions, there is another side of Abscam which this committee and the Edwards Committee have brought into focus for the first time and which the public needs to understand. It is the Abscam of Senator Pressler brought before the cameras groundlessly with no understanding of why he was there and of other politicians subjected to similar groundless intrusion, invasion of privacy, and injury to reputation. It includes three politicians offered money under such ambiguous circumstances -- one may have been set up by a middleman -- that prosecutions did not occur.

Overall it encompasses FBI authorizations to set up bribe-offer meetings with 27 public officials solely on the basis of representations from middlemen who were less than reliable and outside any effective government control. While two authorizations were cancelled, the others were not. Five public officials never came to a meeting. Twenty meetings were held but only twelve convictions resulted. To be sure, this is a 60% success rate, but it is also a 40% failure rate using a highly intrusive technique with damaging consequences. 12/

We believe that too many innocent public officials were targeted for bribes and/or brought before the cameras. For each of the innocent, civil liberties were infringed, and reputations harmed. As Senator Rudman stated with respect to Senator Pressler:

> Senator Pressler will carry this for life. It is almost like someone who has been exposed to radiation. The doctors tell them they are all right, but every day of their life they wonder if something is

> eating away at them. Hardly a day has gone by since I was named to this Committee that Senator Pressler has not at some point during the day on the floor come up and said something about: I hope that maybe I can finally be cleared. And I said to him: Larry, you are clear, there is no question; you have a letter, essentially, almost, I would say, of apology from the Director of the FBI. But in his mind he was tainted. We are talking about prices. . . We are talking about a pretty heavy price. 13/

A price was paid even by those who did not attend a meeting simply by being targeted for a bribe offer. Congressman William Hughes of New Jersey who became suspicious at the last moment and did not come to a meeting where a bribe was authorized to be paid to him described that price to Director William Webster:

> You know that I feel very deeply about it, because we are talking about people, citizens. . .I think what differentiates us from a police state is the fact that we have an ordered society. We have certain basic protections for innocent people. And I ask myself the question, I am going to ask you that: What is it, Bill Hughes, that you did or you said that would really have your name interjected into the scum of an ABSCAM? Can you tell me what I did or said at any time, what meetings I might have gone to, what people I might have talked to, what associations I might have had? I dealt with your agency for years, I still deal with it. I know personally many of your agents, and I can't believe that they don't know my associations, my habits and other things, and I want to know, what it is that I did or said that really would make me the target of that reasonable suspicion that has been described? (emphasis supplied) 14/

In fact the FBI did not require "reasonable suspicion" to target Congressman Hughes or any other public official in the Abscam undercover operation. Moreover, the alternative "safeguards" it did employ, as well as the authorization process and monitoring of the investigation were wholly inadequate to prevent such infringements of civil liberties as was suffered by the Larry Presslers and William Hughes caught up in the Abscam undercover operation.

Since the "safeguards" that did not work are now embodied in the FBI's Undercover Operations Guidelines issued in January 1981, one year after the termination of the Abscam investigation, 15/ significant changes in bureau standards and procedures must be made to prevent future violations of civil liberties and that task cannot be left to the FBI itself. The failure of the "safeguards" during the Abscam investigation makes this clear.

Abscam: The Failure of Investigative Standards

We have reviewed Abscam with a basic civil liberties concern about undercover operations in mind; namely, whether proper safeguards exist to insure that there is reliable evidence of criminal activity before a person is targeted in an operation. A basic civil liberties principle, one articulated in the Attorney General's Guidelines on Criminal Investigations, is that "individuals and organizations should be free from law enforcement scrutiny . . . (unless there is) . . . a valid factual predicate and . . . a valid law enforcement purpose." 16/ Without proper safeguards to impliment this principle, undercover operations may involve (1) targeting the innocent, resulting in invasion of privacy, (2) gathering information which may injure reputation, (3) testing the virtue of citizens in general, (4) improper selective investigations, and (5) causing the commission of crimes which would otherwise not occur.

The Abscam undercover operation was initiated in May or June of 1978and went through three phases. 17/ In phase I, beginning with its initiation, Abscam was a traditional "sting" operation. The FBI's New York field offices requested and obtained approval from FBI headquarters for an operation focused on the recovery of stolen securities, stolen art objects, and other related organized crime matters. FBI agents and Mel Weinberg, the bureau's informant and cooperating witness in the operation, developed the Abdul Enterprises scenario to put up cash for stolen property. 18/ At this stage, Abscam had a built in safeguard for insuring that those targeted were involved in criminal activity since a "sting" or fencing operation by its very nature attracts persons already engaged in crime (e.g. peddling stolen securities) and as such raises minimal civil liberties concerns.

However, sometime in the fall of 1978, the Abscam investigators shifted the focus of the operation from stolen property recovery to a principle concern with political corruption in New Jersey. 19/ This second phasewas followed by a third and final phase in July 1979 through the end of the investigation in January 1980 when the focus shifted from New Jersey political corruption to political corruption in Congress with the initiation of the "Asylum scenario", the payment of money by phony sheiks to members of Congress for using their influence to obtain asylum for the sheiks in the United States. 20/

The public corruption phases of the Abscam operation were markedly and qualitatively different from a traditional "sting." The FBI did not passively wait for the suspects to come forward but actively encouraged unwitting middlemen who believed they were dealing with Arab sheiks to bring politicians to meetings for the purpose of offering them bribe opportunities. Moreover, unlike a sting, the crimes were not completed by the very appearance of the targets but required a further act on the part of the FBI in making a bribe offer, often repeatedly, to politicians willing to accept. 21/

Unless one assumes that the FBI ought to be allowed to set up random opportunities of this kind or that a meeting of this nature is not intrusive, neither of which assumptions we can accept, then safeguards are necessary to insure that the bribe opportunities are based on as solid a "factual predicate" as any sting operation. As we explain more fully below, we believe two substantive standards must be met -- one permitting an operation to be initiated and the second to target a specific individual. By analogy, if evidence of stolen securities triggers a sting operation, then evidence of political corruption in a particular area must exist to initiate or in this case redirect an Abscam-type operation. Second, if sting operations attract the criminally disposed, then a reliable factual basis must exist for believing that those who come to a meeting where a bribe offer will be made are as criminally disposed.

In March of 1980, a month after Abscam became public, then Assistant Attorney General Philip Heymann testified before the Edwards Committee as to the existence of such safeguards during the Abscam investigation to protect the innocent. Mr. Heymann articulated three central safeguards:

> As a first safeguard, we only initiate investigations, and we only use the undercover technique, when we reasonably suspect that criminal activity of a given type or pattern is occurring or is likely to occur. . . . We impose on ourselves the requirement that there be a well-founded suspicion of criminal activity in a sector or area before commencing an undercover operation . . . 22/

> Most important, however, is the second major safeguard followed in every undercover operation, of making clear and unambiguous to all concerned the illegal nature of any opportunity used as a decoy. 23/
>
> A third important safeguard in undercover operations is our modeling of the enterprise on the real world as closely as we can. 24/
> (emphasis supplied)

In testifying again before the Edwards Committee on June 3, 1982, Mr. Heymann reiterated the three protections -- now incorporated in paragraph "J " of the Attorney General's Undercover Operations Guidelines issued in January of 1981 -- and added a fourth safeguard:

> It was made clear to (the middlemen) that the official was not to be brought in for a meeting unless he understood that a thoroughly corrupt transaction . . . would be offered at the meeting. This is important because it means that a . . . (middleman) . . . who wants to preserve good relations with both Members of Congress and the organization he believes is offering the bribe, has every incentive to avoid angering both parties by bringing an innocent legislator to a corrupt meeting where the legislator would be seriously embarrassedand the briber would fear disclosure and possible prosecution. 25/

It should be noted that of the four safeguards, only two guard against an innocent person being brought to a meeting where a bribe could be offered: the first, the requirement of a "pattern of criminal activity", designed in Mr. Heymann's words, to avoid "fishing expeditions" 26/ and the fourth, the reliance on the self interest of the middlemen to bring in only the corrupt and not the innocent. 27/ If these safeguards fail, an intrusive meeting will be held, the video cameras turned on, an offer of a bribe considered. The other protections, important as they are, protect, not against the intrusion into privacy, but against the commission of a crime by the unwary. 28/ In Abscam, the protections against investigation of the innocent often failed

A Pattern of Criminal Activity

There were two changes in Abscam. The first involved a shift in investigative focus to political corruption in New Jersey. The second was a shift in investigative focus to the Congress. In neither case was the existing "pattern" standard met.

According to Justice Department and FBI officials, phase two of Abscam, the public corruption investigation centered on New Jersey politicians, commenced between November 1978 and January 1979. Asked by the Senate Select Committee to document the "well-founded suspicion of criminal activity" in the sector to justify commencing the public corrpution phase, officials point to the allegations by middleman Howard Rosenberg in November 1980 that New Jersey politicians, particularly Mayor Angelo Errichetti of Camden, were corrupt and would accept bribes in connection with casino deals in Atlantic City and the willingness of Mayor Errichetti to accept a bribe in January 1980. 29/ Responding to Chief Counsel James Neal, Francis M. Mullen, Jr., Executive Assistant Director of the FBI who headed the Criminal Undercover Operations Review Committee set up during Abscam to review all undercover operations, testified to this effect:

> Mr. Neal: All right. Is it your testimony, then, that the reasonable indication of criminal activity in a particular area -- which is one of the safeguards before you open or, I assume, totally change the direction of operation -- came in this case with Mayor Angelo Errichetti?

> Mr. Mullen: Basically, that is correct. 30/

Bureau documents tend to support this basis for initiation. The first document telling FBI Headquarters that bribery of politicians had arisen as a possible avenue of investigation was sent on December 21, 1978, after the Rosenberg allegations. 31/ On January 11, 1979, the FBI's Brooklyn-Queens Field Office told FBI Headquarters that Abscam was "targeted against high level political corruptors," and requested permission to offer Mayor Errichetti a bribe. 32/ A day earlier, Errichetti had also mentioned Senator Harrison Williams as a possible corrupt politician. 33/ Errichetti accepted a bribe on January 20, 1980. 34/

However, there is evidence that Abscam operatives were seeking out corrupt politicians in New Jersey sometime before Mayor Errichetti came into the picture and before the FBI could "reasonably suspect that criminal activity of a given type or pattern" -- here political corruption -- was "occurring or likely to occur." According to the Senate Select Committee, there are at least two taped conversations involving Mel Weinberg, the Bureau's informant and cooperating witness, urging businessmen and middlemen to bring in corrupt politicians as a condition of the sheiks dealing with them. According to the Senate Select Committee Counsel:

> (O)n September 13, 1978 . .. Weinberg told (Herman) Weiss that the sheik would not agree to allow any other person to hold an ownership interest in an Abdul Enterprises venture unless that person were a politician who had to be bribed. In addition, on October 6, 1978, in a conversation with businessman William Rosenberg and Dan Minski, Weinberg again raised the issue of corrupt politicians. On this occasion he did so expressly in the context of a discussion of gambling in

> Atlantic City, New Jersey, and indicated that Abdul Enterprises would provide financial support to Minski and Rosenberg in Atlantic City if they could show him that they had ′the juice.′ It was Rosenberg who, on November 16, 1979, told Weinberg that Abscam defendant Angelo Errichetti, the Mayor of Camden, New Jersey, was corrupt and who then arranged for Errichetti′s introduction to an undercover agent. 35/

Weinberg may have been acting on his own or, according to testimony in the Jenrette trial, on the instruction of his Florida FBI agent contact, Gunner Askeland, who told Weinberg in late October 1978 that the FBI was "no longer interested in pursuing any investigation of illegal securities and that ′the new targets were going to be . . . deals with Las Vegas and Atlantic City and politicial corruption." 36/ If the latter is true, FBI field agents turned Abscam into a political corruption investigation in New Jersey before a "pattern" of criminal activity was in evidence. Even if Weinberg was acting on his own, he was the FBI′s cooperating witness and contact with middlemen and was acting under FBI control. By virtue of Weinberg′s activities, the bureau at least "unofficially" allowed the Abscam investigation to shift to political corruption before significant evidence of corruption was in hand. While a "pattern" may have developed, it developed after the fact.

Finding the requisite "pattern" of criminal activity to justify Abscam's shift from New Jersey politicians to members of Congress is even more problematic. According to the Justice Department and FBI officials, Abscam shifted to a focus on Congress on or about July 26, 1979 when FBI agent Ameroso came up with the "Asylum Scenario" on the Abscam yacht, "The Left Hand", in the presence of Angelo Errichetti, Howard Criden, Joseph Silvestri and other middlemen. The phony sheiks, according to the scenario, might have to leave their country and would need help in arranging for asylum in the United States, the kind of help members of Congress and perhaps immigration officials could arrange for cash. 37/ Again, there is evidence of Weinberg initiating the shift in investigative focus, as it turns out that Weinberg came up with the Asylum Scenario on July 14, 1979 in a conversation with George Katz, one of the middlemen. Weinberg mentioned the need for asylum help. Katz replied that the sheiks would need many friends in Congress and Weinberg told him the sheiks were looking for every friend they could get. 38/ In any event, when the middlemen left the yacht on July 26, 1979 looking for members of Congress who could arrange asylum, phase three of Abscam was underway. It was this scheme that would lead in part in to the indictment and conviction of Senator Williams and the convictions of Congressmen Thompson, Myers, Jenrette, Murphy, Kelly, and Lederer.

Regardless of the convictions that resulted from the operation, it is difficult to find the investigative basis for the FBI's reasonable suspicion "that criminal activity of a given type or pattern is occurring or likely to occur" -- in this case, political corruption by members of Congress in general and selling immigration asylum influence in particular. The very first safeguard activated by then Assistant Attorney General Philip Heymann in March

1980 seems not to have been invoked. At the point of shifting the focus of investigation in July 1979 to members of Congress selling immigration asylum influence, the FBI knew the following:

> -- that in October 1978, middleman John Stowe had told Weinberg that Congressman John Jenrette was "as big a crook as" Stowe but the lead had not been followed and Stowe's reliability was untested. 39/
>
> -- that Senator Harrison Williams of New Jersey had been mentioned by Angelo Errichetti in January 1980 but was being investigated in connection with possible influence peddling to benefit his "secret" interest in a titanium mine and as part of the New Jersey political corruption focus. 40/
>
> -- that in March 1979, Errichetti had named a number of state and local officials as corrupt politicians and one congressman, Michael "Ozzie" Myers. However, in targeting the local politicians, Errichetti's reliability should have been viewed as doubtful. He had brought New Jersey Casino Control Commission Vice-Chairman Kenneth MacDonald to a meeting and had picked up a briefcase of cash "for him" in such ambiguous circumstances that it appears MacDonald may have been set up. By July, Errichetti had produced a state politician at a meeting who did not know he was brought there for a corrupt transaction -- a violation of the FBI's explicit instructions to the middlemen to brief the politicians on the purpose of the meetings. In September 1979, a couple of months later, Errichetti would bring a "phony" immigration official to a meeting in order to scam the sheiks and their representatives. 41/

Apparently, however, the untested allegations of Stowe concerning Jenrette and the mention of Representative "Ozzie" Myers by Errichetti provided the FBI with what they regarded as reasonable suspicion of a "pattern of criminal activity" sufficient to shift the investigation to Congress. Consider this exchange between Executive Assistant Director of the FBI Francis M. Mullen, Jr. with the Chief Counsel of the Senate Select Committee:

> Mr. Mullen: We have had the representations by Mayor Errichetti, the contact with -- Congressman Myers' statements early on. So it is a means of identifying an allegedly corrupt situation and a means of investigating that situation, developing a means of moving forward — in other words, following the lead that developed, not a scenario to target Congress.
>
> Mr. Neal: If the FBI deliberately decided on this scenario to see where it would go, then I ask you, where is your reasonable indication of a pattern of criminality?
>
> Mr. Mullen: Well, we had the representations, as indicated earlier, from somebody who turned out to be all too accurate, Mayor Errichetti, and then after the initial bribe payoff to Representative Michael Myers, that what Errichetti said was very true —
>
> Mr. Neal: Well, now wait a minute. That is sort of after the fact . . . 42/

Two other matters relied on by Justice Department officials to justify focusing Abscam on congressional bribery also fall far from the mark in showing "criminal activity of a given type" that is "occurring or likely to occur." Both Philip B. Heymann, Assistant Attorney General of the Criminal Division during Abscam and Irvin B. Nathan, his chosen deputy in coordinating Abscam prosecutions, have mentioned Koreagate and the 1976 Helstoski case. 43/ Koreagate, as they state, showed that members of Congress can accept bribes and get away with it since there are no witnesses to the transactions and the Helstoski case, as they point out, shows that immigration favors may be bought and a congressman escape prosecution because of inadmissability of evidence protected by the "speech and debate clause." 44/ Both matters may also argue for the value of undercover operations to detect consensual crime, but neither example can be cited as providing a "factual predicate" for on-going criminal activity except to make the safeguard all but meaningless. They are past crimes -- "before the fact" -- and if they justify present undercover operations, almost every institution is vulnerable to intrusive investigation, particularly if allegations by unreliable or untested middlemen are sufficient to make the evidence of past crime in a general area a decisive fact in proceeding with a particular unrelated investigation.

Based on our reading of the record, we do not believe Abscam shifted its focus to political corruption in New Jersey and then to Congress on the basis of solid evidence of on-going political corruption. On the contrary, we believe Abscam's political corruption phases were initiated as "fishing expeditions" into what Francis M. Mullen, Jr. of the FBI calls "possible corrupt situation(s)". 45/ In this case, Weinberg did the fishing, first in his early approach to Weiss and Rosenberg to bring in corrupt politicians in New Jersey and then in his development of the "Asylum Scenario" to test the waters of Congress. Rather than concrete evidence as the basis for investigation, Abscam fits more neatly into the category of investigation described by Director William Webster of the FBI before the Edwards Committee in April of this year:

> What you have is a smell. You have people who talk about it and talk around it and the tendency in our investigations is to focus upon this kind of activity, rather than upon particular individuals and create a setting in which these allegations, or smell if you want to call it, either are true or not true. 46/

That is not to say that a fishing expedition can not be successful from a law enforcement point of view and Abscam had its share of successful convictions. The policy question, however, is whether, as Congressman Robert Kastenmeier put it to Director Webster, "we do not need something more than a smell" when employing the undercover operation technique. 47/ We believe the answer is clearly yes, but in part this turns on our conclusion that other safeguards failed adequately to protect the innocent.

Targeting Particular Politicians

The second major issue is the basis on which the FBI and Justice Department authorized the targeting of particular politicians for attendance at video-taped meetings with FBI agents for purposes of making a bribe offer. In no case did the government condition its authorization for such an intrusive encounter on the standard contained in its own guidelines which require the government to have

> a reasonable indication, based on information developed through informants or other means, that the subject is engaging, has engaged, or is likely to engage in illegal activity of a similar type. 48/

Instead of following this standard, set forth in paragraph J (3)(a) of the Attorney General's Undercover Operations Guidelines, the government employed an alternative standard set forth in paragraph J (3)(b) of the guidelines which requires the FBI to insure that

> the opportunity for illegal activity has been structured so that there is reason for believing that persons drawn to the opportunity, or brought to it, are predisposed to engage in the contemplated illegal activity. 49/

In Abscam, the government authorized each meeting solely on the allegation of a middleman that the politician was corrupt and the ability of the middleman to bring the politician to a meeting with the phony sheiks. The "reason for believing" that the persons brought to the meetings were "predisposed to engage in the contemplated illegal activity" was that the middlemen were instructed by the agents to make it clear to any politician they were bringing to a meeting that they were coming for purposes of engaging in a corrupt transaction. 50/

According to government officials, the virtue of this, in their terms "self-selecting" process is that it avoids the charge that the government selected the targets for political or other improper motive. 51/ In fact, there is no evidence that the government engaged in selective targeting of politicians. However, the danger of this approach is that it relies exclusively on concededly corrupt middlemen to protect the unwitting politician from being subjected to an invasion of privacy and possible injury to reputation.

FBI Director William Webster, testifying before the Edwards Committee a month after Abscam became public, recognized this danger and indicated that further investigative steps were taken to shield the innocent:

> We are also aware of the problems inherent in operations where our undercover Agents are investigating subjects who are influence peddlers or middlemen claiming to know others already willing to engage in criminal activity. Since these

> middlemen do not know they are dealing with the FBI, or that they are the subjects of investigation, it is difficult for us to monitor their activities, and, of course, they are not under our control. We must, therefore, carefully evaluate any information they provide to us as to the willingness of a third party to engage in a crime before we proceed further and assure that if such a third party does not meet with us he is aware of the criminal nature of the meeting. 52/ (emphasis supplied)

Yet there is no evidence on the record that those who conducted or supervised the investigation in the field or in Washington either solicited or required the solicitation of additional information from or about the middlemen to test the reliability of their allegations that the politicians they were bringing to meetings were corrupt or could reasonably be expected to take a bribe. That is the testimony of the agents in the field, the strike force attorneys, bureau supervisors, and Justice Department officials monitoring the investigation. According to the Deputy Counsel of the Senate Select Committee, "the information (that was available) about the middleman's background and his reliability — none of that information ever was forwarded up to the Director for the individual middleman in question" for his consideration when he authorized the bribe meetings. 53/ Even the "indicies checks" of FBI records which were routinely ordered by the FBI when bribe authorization requests came in from the field played no part in the decision whether or not to authorize a bribe meeting no matter how exculpatory. Michael Wilson, Assistant Section Chief of the Personal and Property Crimes Section of the FBI, who ordered the checks stated this in answer to a question put by the Chief Counsel of the Senate Select Committee:

> Mr. Neal: (T)he truth of the matter is,

> isn't it, that in ABSCAM at least, irrespective of what that (the indicies check) showed, you would authorize -- if a corrupt middleman says that Senator A or Congressman B will take a bribe and will come to a certain meeting, you authorize?
>
> Mr. Wilson. That is correct. 54/

The Chief Counsel also observed that "in not one single case did I see anything from other sources, good or bad, about a Senator, a Congressman, a public official, et cetera." 55/ Mr. Wilson's response confirms that this was the case in most instances:

> Mr. Wilson: I do not think that is entirely true. There may have been a couple with some information like that in them, but for the most part, that information was not in there. That was verbally given to my superiors. (emphasis supplied) 56/

Whatever the "verbal" information, it made no difference. If a middleman promised to bring a politician to a meeting, the meeting was authorized to take place subject to the agents following other safeguards (e.g. a clear, realistic bribe offer) designed to protect the innocent not from investigation but from entrapment.

According to Justice Department officials, the kind of "careful evaluation" of other information suggested by Director Webster would have been inconsistent with the objective of maintaining a "neutral" "self-selection" process. Only the willingness of the government to meet with a politician "once a representation was made to a corrupt middleman that a public official, no matter what party, no matter how prominent, was willing to come in," could insure neutrality. 57/ To probe the reliability or veracity of the middlemen's allegations claim Justice Department officials would put discretionary selection into the process, amounting to "reasonable suspicion" or "probable cause" standards and create the perception of political selection of targets. 58/ As Irvin Nathan argued in defense of relying on the middlemen:

> I think the worst of all possible worlds would be selection to say, ´This middleman´s words we will take, this one we will not. This Congressman we will see, that Congressman we will not, to suggest there could be political selection in the process. That is what I think needs to be eliminated, and that is where I think Abscam was very successful. 59/

The Self Interest of the Middleman Safeguard

Instead of probing the reliability of the middlemen, the government relied on the "self interest" of the middlemen in bringing in only corrupt politicians to safeguard the innocent. Summarizing the government´s rationale for this "safeguard" set forth earlier in our testimony:

> -- the middleman will not approach an innocent person with such a statement about an illegal transaction because of fear the innocent person will call the authorities;
>
> -- the middleman will not produce an innocent person at a corrupt face-toface meeting for fear of being subjected to embarrassment, prosecution, or retribution by those making the bribe offers; and
>
> -- the middleman will not bring in the innocent for fear of jeopardizing his continuing lucrative relationship with the criminals he is bringing the politicians to meet. 60/

Yet on a number of occasions the middlemen did bring politicians to meetings who were not told the purpose of the meeting, told that the meeting was for lawful purposes, or instructed in such ambiguous fashion that the FBI agents did not know whether or not they understood the illegal purpose of the meeting.

Angelo Errichetti, a key middleman relied on by the FBI in Abscam, violated the "self interest" rule on several occasions: 61/

> -- In March 1979, he brought New Jersey Casino Control Commission ViceChairman Kenneth MacDonald to a meeting and picked up a briefcase of cash for him in such ambiguous circumstances that it appears MacDonald may have been set up. Errichetti pocketed the bribe. 62/
>
> -- In June of 1979, according to a report of the Senate Select Committee, "Errichetti arranged a bribe meeting between the sheiks' representatives and a New Jersey public official. Before the meeting, Errichetti told Weinberg that the public official would accept a bribe and would guarantee a license for check-cashing privileges in specified New Jersey cities. At the meeting, it became clear that the official would not, and probably could not, make such a guarantee; and Errichetti then admitted that he had not in fact discussed the matter with the official before the meeting." 63/
>
> -- In September 1979, again according to the findings of the Senate Select Committee Counsel report, "Errichetti arranged a bribe meeting between the sheiks' representatives and a high-ranking immigration official. When the "official" appeared, however, he was not an official at all, but one of Howard Criden's law partners. This event shows that both Criden (another middleman) and Errichetti were undeterred by any fear of retribution by the sheiks' representatives." 64/

Joseph Silvestri, another key middleman relied on by the FBI in Abscam, proved almost wholly unreliable in following the "self-interest" rule.

> -- The FBI claims Silvestri was reliable because he produced representative Frank

> Thompson. But documents show that the FBI at the time believed Howard Criden produced Thompson and that Silvestri was unaware of the illegal nature of Criden's plan when he introduced Thompson to Criden. 65/
>
> -- On October 9, 1979, Silvestri represented that for $25,000 a certain State official would accept a bribe and would sell his office. At the meeting the state official accepted the money but then promptly "sent a letter thanking Mr. Silvestri for the legal retainer in connection with the financing of a hotel . . . " The individual has not been prosecuted. 66/
>
> -- On October 19, 1979, Silvestri said he would bring in one of three Congressmen. On October 20th, one of the Congressmen showed but no bribe was offered to the Congressman because "the FBI agents were too unsure of whether the congressman knew why he was there to offer the bribe." 67/
>
> -- On November 7th, 1979 Silvestri was supposed to produce a congressman who would sell his office. The congressman has stated that he was told of legitimate investments in his district but became suspicious and cancelled the meeting. 68/
>
> -- Instead, on November 7th, 1979, Silvestri produced Senator Pressler who, of course, did not know the purpose of the meeting, having been told that some people were interested in advancing his political career. He had never met Silvestri until shortly before the meeting on that day. 69/

Despite Silvestri's record of unreliability, the FBI authorized the bribe meeting with Senator Pressler within one hour of Silvestri's call that he was bringing the Senator in for a meeting. 70/ Moreover, even after the Pressler incident, the FBI, employing the "neutral" principle of self-selection opened an investigation into one of the "most influential, highest-ranking

Congressmen and was pursuing it right up to the very end of the Abscam operation on February 2, 1980." 71/

In our view the safeguard of relying on the "self-interest" of the middlemen to produce the corrupt and not the innocent was destined to fail as it so often did. In fact, the "self-interest" of the middlemen was to misrepresent the facts to both the phony sheiks' representatives and the politicians if they could possibly get away with it. The way Abscam operated permitted them to do so.

First, the middlemen were only benefited if they could produce a politician who would take a bribe so there was an incentive to risk bringing in as many politicians as possible in the hopes of increasing their take. 72/ One middleman, Howard Criden, had an added incentive since he was paid even if the politicians he produced did not take a bribe. 73/

Second, contrary to Justice Department claims, a middleman will approach innocent persons without telling them the corrupt nature of the meeting if he in fact fears they might go to the authorities. If the politician attends the meeting and turns down a corrupt offer with a threat to go to the authorities, the middleman can later "plausibly deny" having known the real purpose of the meeting. He can tell the politician, as Silvestri told Senator Pressler, that "they told me it was for a campaign contribution", 74/ and it is his word against the sheiks as to his involvement in a conspiracy to violate the law. If the politician turns down the offer but does not go to the authorities, he can tell the sheiks that the politician "must have got cold feet." If the politician accepts the bribe, the middleman is home free.

Third, as the Senate Select Committee Counsel has pointed out, themiddleman

> knew the slickly garrulous and street-wise nature of Melvin Weinberg. They therefore had to surmise that Weinberg and Amoroso would not be so foolish or naive as to make an unequivocal bribe offer without first softening up and feeling out the person to be bribed; that is, the middlemen knew it was in Weinberg's interest not to act in a manner that might lead an innocent person to report a bribe offer. 75/

Fourth, the middlemen only risked "embarrassment" or the loss of a continuing lucrative relationship if they had one with the phony sheiks. Some of the middlemen had no relationship with Abdul Enterprises when they produced a politician (e.g. William Eden, William Rosenberg) and others produced only one public official:

> middlemen Ciuzio and Weiss produced only one public official (Representative Kelly); middleman Stowe produced only one public official (Representative Jenrette); middleman Katz, Sandy Williams, and Feinberg produced only one public official (Senator Williams); and none of these middlemen had previously received any money from Abdul Enterprises or engaged in criminal activity for or with Abdul Enterprises. 76/

Finally, the middleman's fear of "angering" the sheiks' representatives to the point of "retribution" may give them pause but only if the middleman are warned in advance that they risk retribution and are punished when they produce politicians who do not take bribes. But, as the Senate Select Committee Counsel report makes clear:

> The documents do not reflect that either of these necessary predicates existed in Abscam. The documents reflect only one

> instance in which Weinberg expressly told a middleman not to bring in public officials unless the middleman was sure that the officials would accept bribes. The documents reflect no instance in which Weinberg even suggested to any middleman that serious consequences would follow the middleman's failure to produce only public officials who would accept bribes. Most important, in the three instances in which middlemen stated that they knew that specified public officials would accept bribes, produced those officials at bribe meetings, and then admitted that the prior statements had been lies, neither Weinberg nor the undercover agent terminated the relationship or threatened the middlemen. In only one of those instances did Weinberg even criticize the middleman. 77/

Safeguards Against Entrapment

Because the safeguards against intrusive investigation and improper targeting of individuals failed in many cases, the Abscam undercover operation principally relied on two other safeguards to protect the innocent. Those safeguards, set forth in paragraph J (2) (a) and (c) of the Attorney General's Undercover Operations Guidelines required making "the corrupt nature of the activity . . . reasonably clear to potential subjects and offering illegal inducements "not unjustifiable in view of the character of the illegal transaction in which . . . individual(s) . . . (are) invited to engage." 78/ However, as we have already pointed out, these safeguards are designed to protect the innocent from entrapment but come too late to protect them from being targeted for intrusive investigation and invasion of privacy.

While we have no quarrel with the safeguards and believe they should be scrupulously adhered to in any future undercover operation -- since there are instances where they were not in Abscam * -- we believe they are inadequate standing alone to prevent possible entrapment. Because the law of entrapment today involves subjective predisposition rather than the objective conduct of the government in creating crime opportunities, 79/ the "clarity" of an illegal inducement or its "realism" do not guarantee against entrapment in particular cases. At the corrupt meetings, FBI agents offered cash, sometimes repeatedly, and required the politician to take it. But a repeated offer of cash may cause one innocent person to say "No" and push another over the brink into the commission of a crime. It depends on each individual and the particular circumstances. Thus rather than relying more heavily on these safeguards — for example the suggestion that cash should have been offered to Senator Pressler so he could say "No" and clear his name 80/ -- we believe the focus should be on tightening the investigative guideline standards and authorization procedures to better insure that those who are offered illegal inducements are already predisposed to crime. The tighter the standards the more the inducement becomes a confirmation of criminality rather than a testing of virtue.

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*For example, Director Webster instructed that money be paid directly to representative Thompson but Agent Amaroso instead gave the money to a middleman. Commissioner MacDonald appeared not to know the money paid to Errichetti was meant for him. One politician took the money and thanked Silvestri for his "legal retainer." Senator Williams was told to play act by Mel Weinberg at one meeting. Unlike other representatives who were offered thousands of dollars, Williams was offered benefits in the millions of dollars.

The Management and Supervision of Abscam

While Abscam may have been the most supervised and monitored of any FBI undercover operation to date, a claim made time and again by FBI and Justice Department officials, 81/ the oversight of Abscam still leaves much to be desired. In part inadequate monitoring of Abscam contributed to the failure of the existing safeguards to protect the innocent from intrusive investigation. Briefly,

> — both public corruption phases of Abscam were underway at the field level without Justice Department review or approval of the nature, scope, or justification for the operation; 82/
>
> -- the Justice Department did not review the FBI's "suitability" determination concerning the use of Mel Weinberg as the FBI's key informant and cooperating witness. Weinberg had previously been terminated as a Bureau informant for running a scam on the side; 83/
>
> -- FBI agents in the field did not properly control Weinberg, either to prevent him from engaging in unauthorized illegal activity during Abscam (sharing in bribes, accepting gifts, coaching Senator Williams) or to insure that his contacts with middlemen were proper. He was not required to record all conversations. His phone calls were not monitored. FBI agents did not prepare FD-302s memorializing all known conversations between Weinberg and middlemen. 84/
>
> -- there was no contemporaneous review by FBI, strike force, or Justice Department officials of the developing record to insure that standards and safeguards were being followed. 85/
>
> -- agents in the field and strike force attorneys supervising Abscam professed little knowledge about FBI or Justice Department guidelines governing informants

> or undercover agents -- particularly the strike force attorneys who claimed that the law of entrapment rather than the guidelines were of paramount importance; 86/
>
> -- there was no one either at the field level, at FBI headquarters or in the Justice Department particularly assigned to monitor Abscam in terms of enforcing the safeguards; 87/
>
> -- the requests for authorization to offer bribes passed through several levels of officials in the field and at FBI Headquarters but were signed off proforma provided a middleman said he could bring a politician to a meeting. The information did not include a specific record of the reliability of the middlemen involved, or any record of independent evidence they adduced. 88/

It is not difficult to see how these shortcomings in authorizing, monitoring, and supervising Abscam contributed to undermining the safeguards. For example, if Weinberg's tape recordings were being reviewed by field level or FBI and Justice Department personnel concerned with enforcing the safeguards, the government would have known that Abscam was shifting to a focus on political corruption in September 1979 rather than December 1979 and may have questioned whether a "pattern" of criminal activity had been established to justify the political corruption operation. A high level review could have been conducted to weigh the risks and benefits and plan for minimizing intrusions into privacy. A similar review could have occurred before Abscam shifted to Congress in late July. More concrete information concerning "ongoing criminal activity" might have been requested before FBI Headquarters allowed the investigation to go forward at both times.

If Weinberg's "suitability" determination had been reviewed by the

Justice Department, more controls might have been placed on him. If all his conversations with middlemen had been taped or memorialized in FD- 302s, * the Director of the FBI and the Justice Department would have known how much reliable information was provided by Errichetti about corrupt politicians in New Jersey and Congress at the 4-1/2 hour unrecorded meeting in late March when Errichetti provided his "list" to Weinberg. 89/ If all of Weinberg's conversations with middlemen had been taped, the FBI Director might have learned that in some cases the middlemen did not promise that when particular congressmen came to a meeting they were prepared to take bribes. 90/ Some authorization requests might have been rejected or postponed pending further verification.

Similarly, if field and FBI Headquarter personnel were supervising Abscam from a "safeguard" or guideline perspective and supplying information to the Director, the Director of the FBI might have had a record of Silvestri's unreliability before him when the request to target Senator Pressler came in from the field. The Director might have cancelled the meeting and asked for more information.

Many of these managment problems have been acknowledged by Justice Department and FBI officials in testimony before the Edwards and Senate Select Committee. 91/ In fact, the Undercover Operations Guidelines issued in January 1980 significantly upgrade the procedures for initiating, monitoring, and extending undercover operations with safeguarding privacy and civil liberties in mind. 92/ However, as we will point out in detail below, we do

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* Bureau procedures require all investigative meetings, conversations and contacts to be reduced to memorandum, known as form FD-302.

not think the current undercover operations guidelines solve all of the significant managment problems associated with ensuring the implimentation of civil liberties safeguards or that civil liberties can be adequately safeguarded merely by improving management mechanisms. Rather, we believe the record demonstrates the need for stricter investigative standards and some degree of external authorization and review. We therefore believe the first priority is to set forth the standards we would recommend for undercover operations as well as adequate procedural mechanisms to insure that those standards are met, and the need to embody both in statute rather than executive guidelines.

The Need for Legislated Standards of Investigation and Controls to Govern FBI Undercover Operations

As Congressman William Hughes, an innocent person targeted in Abscam, emphasizes: "What differentiates us from a police state is that we have . . . certain protections for innocent people." 93/ One of those basic protections is the right of law abiding citizens to be free from intrusive surveillance and invasion of privacy by government investigative agencies.

Undercover operations involve significant intrusions into privacy and other basic civil liberties. Abscam exposed citizens to pretext interviews, deception, audio and video recording of conversations and meetings, and the FBI's testing of persons' disposition to commit crimes. 94/

In other cases, undercover operations may involve infiltration of organizations, surveillance, and information gathering. Current Undercover Operations Guidelines define an undercover operation to include not only the creation of opportunities to commit crimes but "any investigative operation in which an undercover employee is used." 95/ They permit the Director to authorize undercover operations which allow agents to pose as members of the clergy, lawyers, doctors, and newsmedia personnel in circumstances which may involve the intentional collection of privileged information. 96/ In the hands of an errant FBI, and recent history should not be ignored, undercover operations may involve surveillance of lawful political activity and the gathering of information which may be used for purposes of blackmail. It was only a few years ago that Congress discovered and deplored J. Edgar Hoover's compilation of "personal and confidential" files for just such purposes. 97/

Former Attorney General Benjamin Civiletti, in drafting undercover operations guidelines, recognized the intrusiveness of the technique. The Guidelines require the Undercover Operations Review Committee to consider, among other factors, the possible "harm to reputation", the "harm to privileged or confidential relationships", and the "risk of invasion of privacy" involved in any operation before it is initiated, extended, or renewed. 98/ Unless properly controlled, undercover operations may interfere with constitutional rights protected by the First, Fourth, Fifth, Sixth, and Ninth Amendments.

The Need for Legislation

If rights are to be protected in regulating the government's use of the undercover operations investigative technique, legislation is necessary. Undercover operations are another case where the public's view of what the Bill of Rights should protect is at odds with what the Supreme Court believes the Constitution requires. However troubling the investigative conduct in Abscam, the Supreme Court, in the Hampton 99/ and Russell 100/ cases, give the government wide latitude to use undercover operatives and to create opportunities for crimes without running afoul of the Constitution. 101/

Similarly, while we believe undercover operatives and informant infiltrators are as intrusive as wiretaps and bugs which require a judicial warrant under the Fourth Amendment, the Supreme Court does not, holding that citizens do not have a "reasonable expectation of privacy" that their confederates are not police operatives or informants. 102/ Nor is there a case holding that a "reasonable suspicion" standard must be met before a general investigation can be conducted. 103/ Faced with similar situations, Congress in recent years has on several occasions legislated protections for citizens rights which go beyond current Constitutional requirements. For example, Congress established a judicial warrant requirement for "national security" wiretaps, 104/ created a right of privacy in bank records, 105/ and protected news organizations from searches for evidence of crime by third parties. 106/ Congress should follow these precedents in enacting legislation to govern undercover operations.

While Congress can recommend changes in the Attorney General's Criminal Investigations and Undercover Operations Guidelines, guideline changes by themselves -- particularly with respect to basic investigative standards and controls -- are illusory reforms for a number of reasons. First, guidelines can be changed with the "stroke of a pen," and without public hearings or debate. A case in point is the Attorney General's Domestic Security Guidelines issued in 1976 to restrict domestic intelligence investigations following extensive congressional investigations into massive surveillance of lawful political activity by the FBI over several decades. In the near future, the FBI plans to issue "new" Domestic Security Guidelines which may loosen some of the restrictions. 107/ With memories of the record of past abuses fading and because of the turnover in Congress, it is doubtful that the bureau will encounter much opposition to the changes.

Second, and equally important, the controlling interpretation of executive guidelines remains with the executive branch exclusively. A guideline standard which may appear strict to those outside the executive branch may not be strict at all because of internal administrative interpretation. 108/ For example, the "pattern of criminal activity" standard in Abscam appears strict but turned out to require only the allegations of an unreliable middleman, together with the past record of Koreagate, to justify finding a pattern of on-going criminal activity in Congress. Congressional oversight can play some role in determining the meaning of guidelines, but without a common consensus as to their meaning, oversight of guideline enforcement is nearly impossible. 109/

Legislating basic standards and controls, on the other hand, locks the guidelines in place. It provides the executive branch and the Congress the opportunity to develop a legislative history to explain the meaning and application of the standards — a consensus of meaning that can be used for purposes of oversight. It provides a record and a benchmark against which to consider future changes in the standards and by requiring those changes to go through the legislative process, permits the Congress and the public to debate recommendations and influence the outcome. Finally, it permits the establishment of external controls (e.g. a judicial warrant or civil remedies) to enforce the standards.

In advocating the need for legislation, we want to make it clear that we are not suggesting that all of the guidelines and procedures governing investigations or undercover operations be enacted into statute but only basic standards, restrictions, and controls. The management and control of operations or investigations should be left to guidelines, with the Congress suggesting broad requirements it would like to see met (i.e. frequent review of operations, Justice Department supervision and so forth).

Essentially, we are proposing that Congress again take up the FBI Charter drafted by the FBI and introduced by Senators Edward Kennedy and Strom Thurmond in the 96th Congress (S. 1612). While we believe the standards set forth in the Charter need to be stricter, we believed it constituted a good beginning in fashioning a law which would give the FBI the authority it needed to conduct investigations -- including undercover operations — as well as standards and restrictions to protect civil liberties. 110/ Alternatively, Congress could take up those provisions of the charter dealing with undercover operations and enact them after careful deliberation, proceeding to a full FBI Charter over time. In either event, legislation is necessary and the standards and controls we believe should govern undercover operations are set forth and discussed below.

A Reasonable Suspicion Standard for Undercover Operations

We recommend that the FBI should only be able to initiate an undercover operation under the procedures of the Attorney General's Undercover Operations Guidelines if it meets the "full investigation" standards set forth in the Attorney General's Criminal Investigation and Domestic Security Guidelines. Under the criminal investigative guidelines, a general crimes investigation may not be initiated unless

> facts or circumstances reasonably indicate
> that a federal crime has been, is being,
> or will be committed. 111/

Similar standards exist for organized crime and domestic security investigations. 112/ To meet the standard in those undercover operationswhich involve the "Creation of Opportunities for Illegal Activity" under paragraph J of the Undercover Operation Guidelines, the FBI would be permitted to initiate such an operation only if

> facts or circumstances reasonably indicate that the operation will detect criminal activity of a type or pattern that is occuring or likely to occur in the absense of an undercover operation.

Although Justice Department officials have testified that this standard is essentially embodied in Paragraph J (2)(b)'s requirement that the FBI have "a reasonable indication that the undercover operation will reveal illegal activities", 113/ we believe our reformulation more clearly indicates that such operations must be predicated on reliable factual information that criminal activity of a given type or in a particular section is occuring or likely to occur and that the operation is designed to provide an additional opportunity to engage in that criminal activity. 114/

These changes are significant. While the FBI conducts investigations, it also conducts "inquiries" which may be based on "information or an allegation not warranting full investigation." 115/ Except for Domestic Security investigations which, under the Undercover Operations Guidelines, require the FBI to meet the "full investigation" standard, 116/ FBI guidelines permit undercover operations at the "inquiry" stage provided high level authorization is obtained. 117/ To the extent that Abscam was initiated on the basis of allegations or information of dubious reliability, of which there is considerable evidence, the FBI was acting fully consistent with its current guidelines and could do so in the future without a change in the standards governing undercover operations. 118/

The "full investigation" standard should apply in all undercover operations. The distinction made in the guidelines between domestic security and other undercover operations such as Abscam makes no logical sense. Both involve the use of an intrusive technique in sensitive circumstances and should be initiated only on the basis of "specific and articulable facts" sufficient to indicate that criminal activity or a pattern of criminal activity is occuring or likely to occur.

Essentially, Congress would require the FBI to develop and document reliable information and allegations to justify its initiation of an undercover operation. 119/ This should be set forth in a single written memorandum which lays out all of the relevant information as required under paragraph C (1) and paragraph E (1) of the current guidelines. In all likelihood, the FBI would have been able to meet this standard to justify phase two of Abscam focused on political corruption in New Jersey. The difference is that the FBI would have needed to supply a reliable factual predicate for the shift in the investigation before politicians were approached. For example, before Mel Weinberg was permitted to approach Rosenberg about bringing in corrupt politicians, the FBI would have had to satisfy itself that Weinberg, the key informant, had personal knowledge about corrupt political figures in New Jersey. In all probability, he did. Similarly, Rosenberg could have been queried as to his "personal knowledge" about Errichetti's corruptability and reliability. The FBI, required to meet the full investigation standard, might have pressed Errichetti earlier for his "list" (in December rather than March), and recorded the crucial 4 1/2 hour meeting in March where he named corrupt politicians to bolster its request for focusing the investigation on "high level political corruptors." Weinberg or the agents would have queried Errichetti as to his reasons for placing persons on that list and his personal knowledge of their corruptability (i.e. prior dealings, etc). FBI Headquarters, in reviewing the request for authorization, would have been concerned with the evidence of a pattern developed by field agents and all evidence pertaining both to the reliability or unreliability of its cooperating source, Weinberg, and the middlemen the agents were dealing with to develop the case.

Justice Department and FBI officials argue that this kind of probing may have blown the cover on Abscam -- the middlemen would have become suspicious they were dealing with police agents. 120/ But Weinberg was a cooperating source of information. Moreover, questioning the middlemen was perfectly consistent with cover. The FBI agents, acting as the phony sheiks' representatives, also had a legitimate worry of being exposed to the authorities. They had a right to question Rosenberg and Errichetti as to their personal knowledge about corrupt politicians because if they were puffing, the politicians brought to the meetings might go to the authorities. They had no basis for trusting the middlemen and the middlemen had no basis for thinking they did. The questioning would have appeared quite consistent with the sheik's representatives' criminal intentions and professional sense of caution. 121/

If the "full investigation" standard were in force, the FBI would have encountered more difficulty in justifying phase three of Abscam focused on Congress. At the time phase three was initiated, Errichetti had named representative Michael "Ozzie" Myers as corrupt but Errichetti had also proved unreliable. 122/ Myers was not named in connection with immigration favors and the FBI had no evidence of on-going bribe taking by members of Congress in connection with such favors. 123/ The Helstoski case occured in 1976 124/ and Congress had since changed the rules so that the introduction of a private immigration bill could no longer by itself stay extradition. 125/ Koreagate in no way could be relied on as evidence of "on going" criminal activity and legislative history should make this clear. On the other hand, Errichetti's 4 1/2 hour conversation in late March might have provided reliable information of political corruption in Congress. Similarly, the careful probing of the middlemen brought together to discuss the "Asylum Scenario" in late July 1979 may have yielded reliable information or allegations concerning members of Congress.

Regardless, reasonable suspicion must be established to initiate undercover operations. Otherwise, fishing expeditions will occur and the FBI will be free to target citizens on the basis of unsupported allegations often of dubious reliability. In testimony, Irvin Nathan suggested that an undercover offer to sell drugs to a high government official would be a good way to prove or disprove an allegation of drug taking in investigating whether to invoke the Special Prosecutor statute. 126/ Only a reasonable suspicion standard can bar such overbroad and "chilling" uses of the undercover technique. Consider Nathan's proposal in the context of the recent allegations by a former congressional page that representatives engaged in sex and bought drugs from some of the pages. Nathan apparently would permit the FBI to attempt to sell drugs to representatives, without requiring the FBI to determine the reliability of the person making the allegations. As it turns out, the former page was lying. Under a reasonable suspicion standard, the former page would be thoroughly investigated and found out without directing an undercover operation at members of Congress. In fact, the FBI proceeded in just this way. But only a change in the standards can insure that the FBI will always lay a proper foundation before even considering the use of intrusive undercover techniques. Even if some corrupt politicians or citizens escape detection, it is a price worth paying to prevent sweeping and dangerous government intrusions into privacy based on mere allegations of criminal activity.

Approving the Initiation or Modification of An Undercover Operation

For the reasonable suspicion standard to be effectively followed, the Undercover Operations Review Committee (UORC) must conduct a full scale review of the basis for initiating, modifying, extending, or renewing undercover operations to insure that the standard has been met. Current guidelines are inadequate in this respect and could permit another Abscam to occur without prior review and authorization based on the full investigation standard.

Under the current Attorney General's Undercover Operations Guidelines, operations are divided into those which may be approved by a Special Agent in Charge (SAC) at the field level 127/ and those which involve major expenditures of funds, long periods of time (more than six months), 128/ or a number of "sensitive circumstances" such as criminal activity by public officials, political groups (Domestic Security), or which involve substantial risks of violence or intrusions into privacy or confidential relationships. 129/ If an operation, initially approved by a SAC, comes to involve large finances or "sensitive circumstances", the guidelines require the UORC to be modified and a new or amended application to be processed. However, the guidelines do not require the operation to be suspended pending approval of the modification. Under paragraph M, the UORC has the discretion to allow the operation to continue or to "modify, suspend, or terminate the operation" pending review of the new application or amended application. 130/

As we interpret the guidelines, Abscam could occur again without a full scale review of the basis for its shift from a "sting" operation into one focused on political corruption. Arguably, the first "sting" phase could be approved by a SAC since it did not appear to involve the requisite finances or sensitive circumstances. 131/ When the agents began to probe political corruption, the UORC would have to be notified but could decide to permit the operation to go forward before approving the modification under paragraph M. 132/ Thus, while the application for modification was being processed, Mel Weinberg could have made a number of contacts with middlemen without FBI Headquarters being aware that the agents may not have had reliable information to establish a pattern of criminal activity. The same could have happened before the FBI UORC understood the basis for targeting members of Congress.

The only way to insure that the full investigation standards are met is to require that all undercover operations require a review and authorization by the Undercover Operations Review Committee. Moreover, the guidelines should require the UORC to approve any significant modification in the operation before permitting the operation to move forward. 133/ The guidelines permit the FBI to take necessary or emergency action pending high level approval and authorization in a number of circumstances. This should suffice, pending the UORC's review and approval of any modification or extension of an operation based on full investigation standards being satisfied.

An Objective Standard of Criminal Activity To Target Particular Individuals

Once an undercover operation is underway, we believe that persons should be targeted only when there is ~~believable~~ reliable evidence that they are engaged or likely to engage in criminal activity of the type under investigation. While a "sting" operation by definition draws in persons engaged in criminal activity, undercover operations involving infiltration or the creation of opportunities for illegal activity under paragraph J of the Undercover Operations Guidelines, may or may not. In these situations, we believe the FBI, before targeting any particular person or group, should be required to show that

> there is reliable information developed through informants or other means, that the subject is engaging, has engaged, or is likely to engage in illegal activity of a similar type absent the undercover operation.

While the Undercover Operations Guidelines include a similar basis for targeting persons, 134/ the guidelines explicitly state that "inducements may be offered to an individual even though there is no reasonable indication that (a particular) individual has engaged, or is engaging, in the illegal activity that is properly under investigation" 135/ and authorize the FBI to offer inducements on other bases. As in Abscam, the FBI may try to structure the opportunity in such a way as to give the bureau reason to believe that the person drawn to it is predisposed to commit a crime 136/ or even proceed on the basis of the FBI Director's authorization alone. 137/

As we have pointed out, the Abscam requirement that the middlemen inform the politician that the meeting he was coming to was for corrupt purposes failed to protect the innocent from targeting in a significant number of cases. Other safeguards only protected against entrapment. We believe that requiring the FBI to meet a factual evidentiary standard would offer such protection without unduly interfering with investigations such as Abscam.

Instead of targeting politicians merely on the allegations of middlemen, the FBI would be required to show that particular persons on the basis of reliable information or allegations if offered opportunities to commit crime are likely to engage in corrupt transactions. 138/ In Abscam, the FBI would have probed Mel Weinberg as to his knowledge of the middlemen and their reliability. Agents would have questioned the middlemen about the persons they were bringing to the meetings or said they could produce at meetings. Did the middlemen know the politicians in question? Had they dealt with them before? Could this be verified by the middlemen or could the FBI determine this by independent investigation and checks of other informants and sources? 139/ The agents could have made it clear to all middlemen that if they did not prove reliable they were "out of business" and subject to "retribution." 140/ If a middleman developed a reliable "track record", his word would be entitled to great weight. Information as to a middleman's unreliability, as in the case of Silvestri and Errichetti in particular, would weigh heavily against authorizing a bribe offer on the ability to bring someone to a meeting. No meeting would have been authorized unless the FBI listened to a tape between Weinberg and the middleman stating that he was bringing a corrupt politician to a meeting and what that politician had been told about the meeting and how he had indicated he would deal with the sheik's representatives. All other information about the congressmen, particularly exculpatory matter, would be made a part of the authorization request documents.

Following this procedure, the FBI would have learned that Silvestri did not know Senator Pressler and that meeting would not have been authorized. Commissioner Kenneth MacDonald may never have been set up by Errichetti. An investigation of a high ranking member of the House may not have been authorized. Congressman Hughes might have avoided involvement in the "scum" of Abscam as he put it.

The Justice Department and the FBI oppose the notion of probing the middlemen on two grounds, neither of which are persuasive. First, officials worry about blowing the "cover" of the investigation by making the middlemen suspicious. 141/ But as we have already pointed out, the phony sheiks' representatives had good reason to question the middlemen's reliability — the fear that if the middlemen brought in politicians who were innocent, the politicians would report the sheiks and their representatives to the authorities. 142/ Certainly there was no risk in probing the reliability of Weinberg, the Bureau's informant.

The second concern is that an objective standard would require the FBI to exercise discretion in the selection of targets and therefore create the perception of political motive. 143/ Certainly, selection or discretion would be exercised under our recommended standard but the criteria for selection, if spelled out in regulations, would be demonstrably related to legitimate law enforcement, investigative purposes. If applied evenhandedly in all cases, there would have been no basis for the charge of "political" selectivity. 144/ Moreover, relying on the middlemen alone to select targets is not only a weak safeguard but no guarantee against the FBI being caught up in political or other improper selection. The bureau, in some future case, may work with an informant who has a political grudge to settle rather than a scam to run and middlemen with similar motives. Probing the reliability of informants and middlemen can avoid this situation as well as establish the "factual predicate" that justifies law enforcement intrusion in particular cases.

A Warrant Requirement

The most neutral and effective way to enforce standards in undercover operations to protect the innocent is to require a neutral magistrate to issue a warrant before the undercover operation technique can be directed at any person or group for purposes of infiltration or to test criminal predisposition. As the Supreme Court said in Keith :

> Those charged with (the) investigative and prosecutorial duty should not be the sole judges of when to utilize constitutionally sensitive means in pursuing these tasks. The historical judgment, which the Fourth Amendment accepts, is that unreviewed executive discretion may yield too readily to pressures to obtain incriminating evidence and overlook potential invasions of privacy and protected speech. 145/

James Q. Wilson has recommended the statutory establishment of a warrant requirement for using undercover operations to target members of Congress to protect the principle of separation of powers. 146/ In testifying on the proposed FBI Charter, the ACLU recommended the establishment of a judicial warrant for infiltration by undercover agents and informants in domestic security investigations on the basis of the need to protect privacy of lawful political association guaranteed by the First and Fourth Amendments. 147/ Neither recommendation goes far enough. The basic right that need protection is that of all law abiding citizens to be free of intrusive surveillance by government agents and this requires a warrant of general application to all intrusive undercover operations.

While we believe an informant infiltration may be more intrusive than a wiretap since he or she acts as a "walking, talking bug" which may influence the activities of citizens or groups, thus requiring a warrant under the Fourth Amendment, undercover operatives present an even stronger case for protection under the Constitution. While citizens may arguably have no reasonable expectation of privacy that their confederates will not report their conversations to authorities, we do believe law abiding citizens have a reasonable expectation of privacy that government undercover agents are not monitoring their conversations or investigating, through the offer of bribes or other inducements, their disposition to commit a crime. 148/

While the courts have not constitutionally required such a warrant, 149/ the Congress should do so by statute with respect to undercover operations following the precedent of the Foreign Intelligence Surveillance Act which created a judicial warrant for national security wiretaps. 150/

The statute would provide for a federal district court judge to consider applications for targeting persons or groups in an undercover operation which are approved by the Director, or head of any law enforcement agency conducting such operations, stating (1) the nature of the operation, (2) the basis for conducting the operation, (3) the objective facts and circumstances which indicate that the subject or subjects of the application are engaging or likely to engage in criminal conduct, (4) the reasons why less intrusive means will not suffice for the investigative purpose, and (5) the steps that will be followed to minimize invasion of privacy or other substantial risks to personal liberties. The statute would authorize the judge to approve the application if the standards were met. At least in cases where the intrusion is into zones of privacy protected by the Fourth Amendment there would have to be a formal finding of "probable cause." Provision can also be made for modification or renewal of the application and for emergency exceptions provided such exceptions are promptly brought before the court. The government would have the right to appeal a denial of an application to an appeals court.

Of course, this will place a new burden on our law enforcement agencies, but we believe it is fully justified by the intrusiveness of the technique and the analytic similarity between it and other techniques subject to a warrant requirement under the Fourth Amendment. Nor do we believe it is an undue burden. In all likelihood the courts would approve most applications, not because they will serve as a "rubber stamp", but because the necessity to go before a neutral magistrate will cause the government to document the basis for investigation and deter it from seeking warrant authorization in cases where it has no reliable factual basis for investigation. This is the very purpose and reason for the reform.

To enforce the warrant requirement, Congress should establish a civil damage action against the government available to any person targeted by an undercover operation without a court warrant. The Director of the FBI, or head of any agency conducting undercover operations, would be required to conduct a disciplinary hearing concerning agents who engage in unauthorized targeting of citizens and issue a public report as to disciplinary actions taken and the reasons for particular disciplinary decisions.

An Alternative to a Judicial Warrant

At the request of the Committee, we have been asked to suggest alternative mechanisms for protecting individual liberties should Congress decide not to enact a judicial warrant requirement for undercover operations. At minimum, Congress should require a similar application and authorization process within the existing structure set up by the Attorney General's Undercover Operations Guidelines.

Under this alternative, a detailed application for directing an undercover operation at any person or group, identical to the one recommended for submission to the court, would be required to be submitted to the Undercover Operations Review Unit. Membership on the UORC would be expanded to include Justice Department officials not directly involved in law enforcement, for example members of the Civil Rights Division, to insure that civil liberties interests are taken into account in the review and approval process.

If the Unit was satisfied that the standards for investigation were met, it would send the application record with recommendations to the FBI

Director for his review and approval. The Director, or his designated assistant, would be empowered to authorize the targeting of a person or group.

To enforce this internal procedure, Congress should create a civil damage action against the government by any person who suffers invasion of privacy or injury to reputation because of an unauthorized undercover opeation investigation. Any agent who knowingly or intentionally failed to obtain proper authorization before targeting an individual or group would be subject to discipline. The FBI Director would be required to issue a public report on disciplinary action taken and the reasons for his action in particular cases.

Supervision of Undercover Operations

Once appropriate standards are adopted, proper supervision of undercover operations will help to insure that standards and procedures are followed. We have already made two recommendations which we believe will improve the internal supervision of specific operations:

> -- that all applications for the initiation, modification, extension, or renewal of undercover operations be approved by the Undercover Operations Review Unit; 151/ and
>
> — that a formal independent authorization process be adopted for targeting persons or groups in particular undercover operations.

Additional statutory requirements for the supervision of undercover operations need to be adopted. The decision as to how to meet these requirements through the issuance of guidelines should be left up to the Attorney General and the FBI Director.

First, undercover operations should be designed and conducted to insure compliance with guideline standards and procedures. The Attorney General and the FBI Director may mandate training for agents, requirements to instruct informants as to the "rules of the game", the planning of operations with guideline compliance in mind, the appointment of supervisors tasked to monitor guideline compliance. 152/

Second, the Justice Department shall review the suitability determination for each informant or cooperating source and insure that they are properly controlled and supervised or terminated if they violate FBI instructions or procedures. 153/

Third, all meetings and contacts between agents, informants and others should be recorded or memorialized and procedures adopted to permit contemporaneous review of this record. This was a major managerial failure in Abscam and guideline procedures need to be developed to correct it. 154/

Fourth, all information as to the reliability of informants or other persons relied on by the FBI for operational assistance (including middlemen) must be made a part of the record. In future Abscams, supervisors and those who approve operations should be apprised of all information as to the reliability or unreliability of informants or middlemen.

Fifth, in major operations, FBI and Strike Force supervisors should be designated at the field level to monitor the operations and report to designated supervising FBI and Justice Department teams in Washington. The guidelines should provide for daily communication, frequent meetings, and on-site inspection by FBI Headquarters and Justice Department teams. The teams would be tasked to insure compliance with guidelines and procedures and to report failure or departures from procedures to the Undercover Operations Review Unit, the Director, and the Attorney General or his designate. 155/ No operation should be conducted for more than 90 days without supervisory review.

Prohibitions

Under current guidelines, the Director apparently may authorize the use of undercover operations for purposes which are so dangerous and intrusive that we believe Congress should act to prohibit these activities. In particular, the guidelines permit the Director to authorize undercover operations which may involve substantial risks of violence or injury to persons or which may intrude upon or interfere with confidential communications and relationships. 156/ Congress should respond by prohibiting:

> -- the FBI from authorizing undercover activities if there is a reasonable risk that as a consequence of the activities violence may occur or result in injury to third parties;
>
> -- the FBI from using an undercover employee or cooperating individual from posing as an attorney, physician, clergyman, or member of the new media for purposes of establishing a professional or confidential relationship with private individuals;
>
> -- the FBI from permitting undercover employees or cooperating sources from adopting a pretext or pose in order to solicit privileged or confidential information from an attorney, physician, clergyman, or other person under the obligation of a legal privilege of confidentiality; and

> -- the FBI permitting an undercover employee or cooperating source from givingtestimony in any proceeding in an undercover capacity in a manner which denies due process rights to any person.

Conclusion

Mr. Chairman, this concludes our testimony on FBI Undercover Operations. Again, I want to thank you on behalf of the American Civil Liberties Union for extending us an opportunity to testify on an issue of vital importance to the public, the Congress, and all who are concerned with the need to strike a proper balance between law enforcement functions and the protection of civil liberties. We hope that out of these hearings and the Committee's deliberations a consensus will develop around the wisdom of enacting an investigatory charter for the FBI.

FOOTNOTES

ACLU TESTIMONY ON FBI UNDERCOVER OPERATIONS

1 / Our basic sources are the hearings of the Senate Select Committee to Study Law Enforcement Undercover Activities. Hereinafter referred to as Senate Select Committee Transcripts. The Transcript is unpublished to date and so references will be to particular statements and testimony with particular hearing dates and pages of the unpublished record noted. We also reviewed the record of the Hearings of the House Judiciary Subcommittee on Civil and Constitutional Rights. Hearings in 1980 and 1981 are contained in FBI Undercover Guidelines, Oversight Hearings Before the Subcommittee on Civil and Constitutional Rights of the Judiciary House of Representatives (97th Congress 1st. Sess. Feb. 19, 25, and 26) (G.P.O. Serial No. 18) Hereinafter cited as Edwards Committee Published Hearings. Recent House hearings are unpublished and hereinafter are cited as Unpublished Edwards Committee Hearings with particular statements and testimony keyed to dates and pages.

2 / Attorney General's Guidelines On FBI Undercover Operations, January 5, 1981.

3 / Statement of Philip B. Heymann, former Assistant Attorney General of the United States, Unpublished Edwards Committee Hearings, supra note 1, pgs 8-9 (June 3, 1982).

4 / See note 1, supra. We also reviewed the briefs filed in the Due Process Hearings in Abscam as well as the court decisions involving Abscam defendants. These will be cited where appropriate.

5 / Prepared Statement, American Civil Liberties Union, FBI Charter Act of 1979, S. 1612, Hearings Before the Committee on the Judiciary, United States Senate (96th Cong. 1st Sess. Part I, Serial No. 96-53) pp. 253-270. (Hereinafter cited as ACLU FBI Charter Testimony). See also, Prepared Statement, American Civil Liberties Union on Need for FBI Charter, FBI Statutory Charter, Hearings Before the Committee on the Judiciary, United States Senate (95th Cong. 2nd Sess. Part I April 20 and 25 1978) Hereinafter cited as ACLU Need for Charter Testimony.

6 / See ACLU FBI Charter Testimony, note 5 supra, p. 257. The FBI Commentary accompanying S. 1612 did not exclude undercover operations from preliminary inquiries. Neither do the current Attorney General's Guidelines On Criminal Investigations of Individuals and Organizations, December 2,1980. Undercover Operations are

permitted in "inquiries" based on unsubstantiated allegations provided high level authorization is obtained. See Section D (5)which lists excluded techniques and (6) which does not bar undercover operations. The Guidelines state that "they are consistent with the requirements of the proposed FBI Charter Act but do not depend upon passage of the Act for their effectiveness."

7 / Opening Statement of Senator Charles McC Mathias, Committee Chairman, *Senate Select Committee Transcripts*, note 1 *supra*, July 20, 1982, pp. 4-5.

8 / Edwards, Don, "Worry That You Could Be a Victim" Outlook Section, *Washington Post*, Sunday, Sept. 19, 1982, p. B 1.

9 / Mathias, *Op*. *Cit*, pp. 5-6.

10/ *Ibid*. p. 6.

11/ Testimony of Oliver B. Revell, *Senate Select Committee Transcripts,* note 1 *supra,* July 20, 1982, p. 23.

12/ *Report to the Select Committee of the Review By Its Counsel of the Confidential Abscam Files of the FBI*, August 18, 1982, p. 34.

13/ *Senate Select Committee Transcripts*, note 1 *supra*, July 21, 1982, p. 131.

14/ *Unpublished Edwards Committee Hearings*, note 1, *supra*, April 29, 1982, p. 74.

15/ See test accompanying note 3 *supra*.

16/ Introductory Paragraphs, *Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations*.

17/ See generally Sections III and IV, *Report to the Select Committee by Its Counsel*, note 12, *supra*, pp. 5-13.

18/ *Ibid*. pp. 5-6. See also Testimony of FBI Director William Webster, *Unpublished Edwards Committee Hearings*, note 1 *supra*, April 20, 1982, p. 20.

19/ *Ibid*. p. 7. See also Webster, *Ibid*. p. 21.

20/ *Ibid*. p. 11. See also Webster, *Ibid*. p. 23.

21/ Testimony of Philip B. Heymann, Assistant Attorney General Criminal Division, Department of Justice, *Edwards Committee Published Hearings*, note 1 *supra*. p. 132.

22/ Ibid. pp. 131-132.

23/ Ibid. p. 132.

24/ Ibid. p. 133.

25/ Statement of Philip B. Heymann, Professor of Law, Harvard Law School, Unpublished Edwards Committee Hearings, note 1 supra, June 3, 1982, p. 15.

26/ Op. Cit. p. 132.

27/ Statement, note 25 supra. p. 15.

28/ "This provides," in Mr. Heymann's view, "the strongest possible protection against any unwitting involvement by individuals brought in by intermediaries or who are encountered directly." Op. Cit. p. 132.

29/ Testimony of Francis M. Mullen, Executive Assistant Director, Federal Bureau of Investigation, Senate Select Committee Transcripts, note 1 supra, July 21, 1982, p. 31.

30/ Ibid.

31/ Report to the Select Committee by Its Counsel, note 12 supra, p. 9.

32/ Ibid.

33/ Prepared Statement of Francis M. Mullen, Senate Select Committee Transcripts, note 1 supra, July 21, 1982, p. 10. (Not keyed to transcript pagination)

34/ Testimony of Francis M. Mullen, note 29 supra, p. 62.

35/ Report to the Select Committee by Its Counsel, note 12 supra, pp. 10-11.

36/ Ibid. p. 10.

37/ Prepared Statement of Francis M. Mullen, Senate Select Committee Transcripts, note 1, supra, July 21, 1982, p. 11. (Not keyed to transcript pagination)

38/ Report to the Select Committee by Its Counsel, note 12 supra, p. 12.

39/ Ibid. p. 12.

40/ Op. Cit. p. 1[illegible].

41/ On naming representative "Ozzie" Myers, see Report to the Select Committee [illegible] its Counsel, note 12 supra, p. 13. On setting up McDonald, see Report pp. 19-21, 32. On not [illegible] the local politician, see Report, p. 32 On the phony immigration official, see Report, p. 32.

42/ Testimony of Francis M. Mullen, note 29 supra. p. 51.

43/ Prepared Statement of Philip B. Heymann, note 25 supra, p. 5-7. Prepared Statement of Irvin B. Nathan, Senate Select Committee Transcripts, note 1 supra, pp. 27-29. (Keyed to statements submitted not transcript pagination)

44/ Ibid.

45/ Testimony of Francis M. Mullen, note 29 supra, p. 53.

46/ Testimony of William Webster, note 18 supra, p. 46.

47/ Ibid. p. 48

48/ Attorney General's Guidelines on FBI Undercover Operations, Paragraph J (3)(a), p. 14.

49/ Ibid. Paragraph J (3) (b) p. 14.

50/ Statement of Philip B. Heymann, note 25 supra. p. 15. Prepared Statement of Irvin B. Nathan, note 43 supra, pp. 18-20. (Not keyed to transcripts)

51/ Testimony of Irvin B. Nathan, Senate Select Committee Transcripts, note 1, supra, pp. 119-120.

52/ Testimony of William Webster, Edwards Committee Published Hearings, note 1, supra, p. 139. Philip B. Heymann also stated that "we seek to take every possible precaution against involvement of the innocent. Such precautions involve a careful evaluation of anything we are told by intermediaries about the possible interest of other persons in a criminal transaction, and an attempt to check such claims to the extent practicable." Testimony of Philip B. Heymann, note 21, supra, p. 132.

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53/ Testimony of Irvin B Nathan, note 51 *supra*, p. 123.

54/ Testimony of Michael Wilson, Assistant Section Chief, Personal and Property Crimes Section of the Criminal Investigative Division, *Senate Select Committee Transcripts*, note 1, *supra*, pp. 27-28 (July 22, 1982).

55/ *Ibid*. p. 29.

56/ *Ibid.* p. 29.

57/ Testimony of Irvin B. Nathan, note 51 *supra*, pp. 118-119.

58/ *Ibid*. p. 120.

59/ *Ibid*. p. 121.

60/ See text accompanying note 25, *supra* and Prepared Statement of Irvin B. Nathan, note 43 *supra*, pp. 18-21.

61/ See generally Section X, "The Use of Unwitting Middlemen As A Technique For Identifying Suspects And Establishing Reasonable Suspicion" in *Report to the Select Committee by Its Counsel*, note 12 *supra* , pp. 28-34.

62/ *Ibid*. p, 32.

63/ *Ibid*. p. 32.

64/ *Ibid*. p. 32.

65/ *Ibid*. p. 33.

66/ Transcript of Testimony of Irvin Nathan, *Senate Select Committee Transcripts*, note 1, *supra*, p.129-130 (July 29, 1982).

67/ *Op*. *Cit*. p. 33.

68/ *Op*. *Cit*. p. 130.

69/ *Ibid*. p. 130.

70/ Testimony of Michael Wilson, note 54 *supra*, pp. 41-46.

71/ Transcript of Testimony of Irvin Nathan, note 66 supra, p. 130.

72/ Report to the Select Committee by Its Counsel, note 12 supra, p. 29.

73/ Ibid. p. 30.

74/ Testimony Transcript of Michael Wilson and Oliver B. Revell, Senate Select Committee Transcripts, note 1, supra, p. 67 (July 22, 1982)

75/ Report to the Select Committee by Its Counsel, note 12 supra, p. 31.

76/ Ibid. p. 30.

77/ Ibid. p. 31.

78/ Attorney General's Guidelines on FBI Undercover Operations, pp. 13-14.

79/ In entrapment, the focus is not on governmental conduct as on the mental state and prior behavior of the defendant caught in a criminal act. As Chief Justice Warren stated in Sherman v. United States, 356 U.S. 369, 372 (1958), "To determine whether entrapment has been established, a line must be drawn between the trap for the unwary innocent and the trap for the unwary criminal." The predisposition test has been upheld repeatedly, and undercover operations sanctioned. See Hampton v. United States, 425 U.S. 484 (1976);United States v. Russell, 411 U.S. 423 (1973).

80/ Testimony of Oliver B. Revell, note 11 supra, p. 114-115.

81/ See Testimony of FBI Director William Webster, Unpublished Edwards Committee Hearings, note 1, supra, April 20, 1982, pp. 17-18. Prepared Statement Francis M. Mullen, Jr. Senate Select Committee Transcripts, note 1, supra, p. 22. See generally Prepared Statement of Irvin B. Nathan, note 43 supra.

82/ Report to the Select Committee by Its Counsel, note 12 supra, p. 8.

83/ Ibid. pp 16-17

84/ Ibid. pp 16-24.

85/ Ibid. pp. 14-15

86/ For example, Thomas Puccio, who headed the New York Strike Force and advised the FBI agents in the field had this to say about the Guidelines enforcement: "Be that as it may, we gave legal advice to the FBI. They had a lot of their own internal rules to follow, I suppose. I was not that much concerned with the FBI's internal rules. I was concerned with what the law was and what it took to make a case and a prosecutable case, because ultimately , we are the judge of that..." Testimony of Thomas Puccio, *Senate Select Committee Transcripts*, note 1, *supra*, p. 116 (July 27, 1982).

87/ *Report to the Select Committee by Its Counsel*, note *12 supra*, pp. 5, 8.

88/ See generally Testimony of Michael Wilson, Assistant Section Chief, Personal and Property Crimes Section of the Criminal Investigative Division, *Senate Select Committee Transcripts*, note 1, *supra*, pp. 1-65 (July 22, 1982).

89/ *Op*. *Cit*. p. 13.

90/ *Ibid*. p. 28-29.

91/ Statement of Philip B. Heymann, *Unpublished Edwards Committee Hearings*, *supra* note 1. Statement (6/3/82); Testimony of Irvin Nathan, *Senate Select Committee Transcripts*, note 1, *supra* (7/29/82).

92/ *Op*. *Cit*. pp. 5,8. See generally, Testimony of Oliver B. Revell, Assistant Director, Criminal Investigative Division, FBI, *Senate Select Committee Transcripts*, note 1, *supra*. (July 20, 1982).

93/ See Text accompanying note 14 *supra*.

94/ *Report to the Select Committee by Its Counsel*, note *12 supra*, p. 14.

95/ *Attorney General's Guidelines on FBI Undercover Operations*, Definitions p. 1. See also Paragraph B (g),(h),(i),(j)which all deal with information collection by undercover operatives, *Guidelines*, pp. 4-5.

96/ *Ibid*. pp 4-5. See Paragraph B, (g),(h),(i),(j).

97/ See generally, "*Final Report of the Select Committee to Study Government Operations with Respect to Intelligence Activities*", *Book II*, U.S. Senate (94th Cong., 2d Sess., Report 94-755 (Government Printing Office: April 26, 1976).

98/ *Attorney General's Guidelines on FBI Undercover Operations*, Paragraph F (3) (c),(d), (e). p. 9.

99 / *Hampton v. United States*, 425 U.S. 484 (1976). In *Hampton* the Supreme Court upheld an undercover operation involving the sale of narcotics to the defendant by a government directed informant and the subsequent purchase of the drugs from the defendant by government agents leading to the defendant's conviction for selling drugs. In an important concurring opinion, Justice Powell stated that "the cases, if any, in which proof of predisposition is not dispositive will be rare." 425 U.S. at 495 n.7.

100/ *United States v. Russell*, 411 U.S. 423 (1973), the conviction of a drug manufacturer was upheld even though the government supplied the essential chemicals for the illicit drugs. The Court, rejecting claims that the goverment was too deeply involved, quoted *Sorrells v. United States*, 287 U.S. 435, 441, and noted "'that officers or employees of the Government merely afford opportunities or facilities for the commission of the offense does not defeat the prosecution.' ..Nor will the mere fact of deceit defeat a prosecution, ... for there are circumstances where the use of deceit is the only practicable law enforcement technique available."

101/ Although Supreme Court decisions hold that in some cases government conduct in an undercover operation might reach "a demonstrable level of outrageousness" to warrant barring a conviction on due process grounds even where the defense of entrapment is not technically available, see *United States v. Russell*, note 100 *supra*, the courts, with one exception, *United States v. Kelly* (Civil Action No. 80-00340 D.D.C.)(Judge William Bryant), have not found Abscam to even approach this level. See *United States v. Myers, et. al.*, 527 F. Supp. 1206 (E.D.N.Y. 1981 (Judge Pratt Due Process Opinion); *United States v. Jannotti*, 673 F. 2d 578 (3rd Cir. 1982) (en banc.); *United States v. Alexandro*, 675 F. 2d 34 (2nd Cir. 1982) See also *United States v. Myers*, 635 F. 2d 932 (2nd Cir. 1980).

102/ See *United States v. White*, 401 U.S. 545 (1971); *Hoffa v. United States*, 385 U.S. 293 (1966); *On Lee v. United States*, 343 U.S. 747 (1951). In part this is based on historical grounds that framers did not intend to bring undercover investigators within the scope of the Fourth Amendment. Most important, the Court has justified the distinction on the assumption of risk of betrayal by one's supposed friends and confidants. Because this "is not an undue risk to ask persons to assume," the Fourth Amendment does not protect the individual's misplaced confidence that a person to whom he discloses information will not later disclose it. *Lopez v. United States*, 373 U.S. 427, 450 (1963).

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103/ Such a standard may be implied from the "reasonable suspicion" standard adopted by the Court in "stop and frisk" cases. Terry v. Ohio, 392 U.S. 1 (1968). The formulation in Terry is used in the current Attorney General Guidelines or Domestic Security Investigations issued in 1976.

104/ Foreign Intelligence Surveillance Act of 1978, Public Law 95-511, Oct. 25, 1978 (95th Cong., 92 Stat. 1783).

105/ Right to Financial Privacy Act of 1978, Title XI of the Financial Institutions Regulatory and Interest Rate Control Act of 1978, Public Law 95-630 (95th Cong. 92 Stat, 3641).

106/ First Amendment Privacy Protection Act, Public Law 96-440, Title I, § 101, Oct. 13, 1980, 94 Stat. 1879.

107/ Statement of William H. Webster Director Federal Bureau of Investigation Before the Subcommittee on Security and Terrorism United States Senate Concerning Domestic Security Guidelines On June 24, 1982.

108/ This Committee has brought to light the FBI's internal rewriting of the definition of public officials subject to undercover operations without any public notification of the change. See Testimony of Oliver B. Revell, Senate Select Committee Transcripts, note 1 supra pp. 50-56.

109/ Without statutory requirements to keep oversight committees "fully and currently" informed, oversight is also difficult. The Select Committee staff has commented on its inability to obtain necessary documents to conduct oversight of undercover operations pursuant to S. Res. 350. As Deputy Counsel Wheeler stated to Irvin Nathan: "My concern with (congressional oversight) is that it is all well and good to say that the guidelines should be enforced internally by the Department as overseen by the appropriate committees of the Congress. But the problem is that my experience in representing this Committee has shown me that it is very difficult for Congress to oversee the FBI and the Department of Justice. We cannot get documents like the Luskin Report, after weeks of asking for them. We had to struggle mightily to get the documents that we did get and we got them under severe limitations. We find, on interviews with the FBI---and this has come out in these hearings--that the FBI unilaterally, without publishing any amendments or without the Justice Department publishing any amendments, has interpreted and revised the terminology of the guidelines. And again, this happens without copies of these documents being forwarded to Congress."

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Testimony of Irvin Nathan, Senate Select Committee Transcripts, note 1 supra, pp. 140-141 (July 29, 1982).

110/ See generally ACLU FBI Charter Testimony, note 5 supra.

111/ Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, Paragraph C (1) p. 2. (December 1980)

112/ Ibid. p. 1 Paragraph B (2) (Racketeering Enterprise Investigations). See also Attorney General's Guidelines on Domestic Security Investigations, Paragraph [illegible]. p. 3 (April 1976).

113/ Attorney General's Guidelines on FBI Undercover Operations, p. 13 (Jaunary 1981).

114/ Essentially, we adopt the original formulation by former Assistant Attorney General Philip B. Heymann, see text accompanying note 22 supra.

115/ Attorney General's Guidelines on Criminal Investigations of Individuals and Organizations, paragraph D (1), p. 6 (December 1980)

116/ Attorney General's Guidelines on FBI Undercover Operations, General Authority (2), p. 2 (January 1980).

117/ See note 6 supra.

118/ As FBI Director William Webster has testified:"The guidelines recognize that inducements may be offered to an individual even though there is no reasonable indication that the particular individual has engaged in or is engaging in illegal activity that is properly under investigation. However, the guidelines provide that no such undercover operation shall be approved without the authorization of the director." Testimony of FBI Director William B. Webster, Edwards Committee Unpublished Committee Hearings, note 1 supra, p. 16 (April 29, 1982).

119/ The Senate Committee Counsel have noted that internal FBI and Justice Department documents "reflect no attempt by the FBI or other Department of Justice personnel to obtain extrinsic evidence of the reliability of the representations of any middleman--for example, the evidence of reliability that is required for law enforcement officers to obtain a search warrant on the basis of statements by an informant. See Aguilar v. Texas, 378 U.S. 108, 114 (1964); Spinelli v. United States, 393 U.S. 410, 415-16 (1969)." Report to the

Select Committee By Its Counsel, note 12 supra, p. 14. Congress should require the FBI to develop such extrinsic evidence to justify an undercover operation.

120/ Testimony of John Good, Supervisory Resident Agent, Federal Bureau of Investigation, Senate Select Committee Transcripts, note 1, supra, p.48-49 (July 22, 1982).

121/ Chief Counsel James Neal made this observation: "(E)verybody has said, 'Well, we have got to go ahead with these middlemen. We cannot say, 'Do not bring them in', because that would blow our cover." That just seems to me to be a cover you could say to somebody like Silvestri, "Look, I want to know [illegible] you are saying this. The FBI might get us if you bring a man in who is not corrupt." In other words, it seems to me that you could probe these middlemen in a way that would advance your cover and still get more information about the reliability of that information." Ibid. p. 59.

122/ See text accompanying note 41 supra.

123/ As Senator Huddleston queried: "I am curious as to why you and whoever made the decision felt that the matter of dealing with immigration problems on a paid basis was in fact a crime problem area inasmuch as in the 200-year history of the United States there has only been one prosecution of any Congressman on any charge relating to bribery connected with immigration matters." Testimony of Francis M. Mullen, Senate Select Committee Transcripts, supra note 1, pp 124-125. July 21, 1982.

124/ It was decided by the Supreme Court in 1979. United States v. Helstoski, 442 U.S. 477 (1979). But this was enough for Mr. Puccio, the Strike Force Leader in New York: "I had a sense, maybe based upon what I read in the newspapers, based upon the publicity given to the Helstoski case, that this was a tremendous area of abuse..." Testimony of Thomas Puccio, Senate Select Committee Transcripts, note 1, supra, p. 90. July 27, 1982.

125/ Statement by Senator Charles McC Mathias, Senate Select Committee Transcripts, note 1 supra, p.

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126/ Testimony of Irvin Nathan, *Senate Select Committee Transcripts*, note 1 *supra*, p. 134 (July 29, 1982).

127/ *Attorney General's Guidelines on FBI Undercover Operations*, Paragraph C, p. 5.

128/ *Ibid.* Paragraph A, pp. 2-3.

129/ *Ibid*. Paragraph B, pp. 3-5.

130/ *Ibid*. Paragraph M (2) p. 15.

131/ *Report to the Select Committee of the Review By Its Counsel*, note 12 *supra*, p. 5.

132/ *Op*. *Cit*. Paragraph M (2). See Testimony of Oliver B. Revell, *Senate Select Committee Transcripts*, note 1 *supra*, pp. 73-75.

133/ Irvin Nathan has endorsed this recommendation. Prepared Statement of Irvin B. Nathan, *Senate Select Committee Transcripts*, note 1 *supra*, pp. 41-42 (July 29, 1982) (Not keyed to transcript pagination but to statement as submitted)

134/ *Op*. *Cit*. Paragraph J (3) (a) p. 14.

135/ *Ibid*. Paragraph J (3) p. 14.

136/ *Ibid.* Paragrahp J (3) (b) p.14.

137/ *Ibid*. Paragraph J (3).

138/ See note 119 *supra*.

139/ As Chief Counsel Neal states: "(I)t seems to me that it would advance your cover--and you know how you do when you are using an informant for the basis of getting a search warrant. If that informant makes a bald conclusory statement that there is contraband somewhere in the house, you ask him, 'How do you know about this? Have you been in the house? When were you in the house? What is the basis of that conclusiory statement? When you say Congressman A or Senator B will take a bribe, what is your basis for that? Why do you say that? Do you know of a situation before where he has done that?' That is the kind of thing it seems to me that you could probe with these middlemen, test their reliability, their basis for the information, and still advance--not blow--your cover." *Senate Select Committee Transcripts*, note 1 *supra*, pp. 59-60 (July 22, 1982)

140/ This did not happen in Abscam. *Report to the Select Committee By Its Counsel*, note 12 *supra*, p. 31.

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141/ See note 120 and 121 supra.

142/ See Text accompanying note 121 supra.

143/ See Text accompanying notes 57, 58 and 59 supra.

144/ As Deputy Counsel Wheeler stated in response to the argument by Irvin Nathan that probing for reliable information as a basis for targeting. is "selective targeting": "That, I submit to you, Mr. Nathan, is a strawman, because in fact, if the reason that 'No' was said with respect to certain people such as Senator Pressler, and 'No' was said pursuant to firm, clear, unequivocal, proper guidelines such as 'Do not invite a person before the camera unless you have a statement by a middleman in which he represents to an agent or on tape that an agent can listen to that this Congressman or this official will accept a bribe,' then in fact you cannot criticize the FBI after the fact because they can say, 'Look, all we are doing was following a pre-established, unequivocal policy, and all we did was apply it." Senate Select Committee Transcripts, note 1 supra, p. 117. (July 27, 1982)

145/ United States v. United States District Court, 407 U.S. 297, 317 (1972).

146/ Wilson, James Q., "The Real Issues in Abscam", Washington Post, July 15, 1982, reprinted in Congressional Record, S8535, July 16, 1982.

147/ See note 5 supra.

148/ Professor Goeffrey Stone of the University of Chicago Law School made this point before the Edwards Committee in testifying on undercover operations: "It is true, of course, that in the ordinary course of our relationships we necessarily assume the risk that our friends and associates will betray our confidences. Insofar as such persons act solely in their private capacities, and not in cooperation with governmental officials, their betrayals undoubtedly fall beyond the scope of the amendment's concern. The analysis shifts markedly, however, once government enters the picture. For the risk that the individual's confidant may be fickle or a gossip is of an entirely different order from the risk that he is in reality an undercover agent commissioned in advance to report the individual's every utterance or misplaced confidence inherent in the nature of human relationships; we are dealing instead with government action designed explicitly to invade our privacy and to end in deceit and betrayal--with government action that appreciably alters the nature of the risks we ordinarily expect to assume. The notion that our willingness to assume one risk means that we must necessarily assume the other is doubtful at least. Indeed, from a constitutional standpoint, we necessarily assume the risk that private citizens will invade our privacy by tapping our telephones, bugging our offices, and ransacking our homes. It has never been suggested, however, that because those risks are unprotected by the Fourth Amendment we must also assume the risk that government agents will engage in similar conduct or induce others to do so for them. There is simply no logical reason to assume that the risk of undercover surveillance is any more 'inherent' in our society than the risk that government officers will tap our telephones, bug our offices, or ransack our dwellings. Edwards Committee Published Hearings, note 1 supra, p. 4-5.

149/ See cases cited at note 102 supra.

150/ See note 104 supra.

151/ See text accompanying notes 127 through 133 supra.

152/ Senator Huddleston's point is well taken: "(I)t would be very proper that when guidelines do exist--and now, we do have a set of, I guess, general guidelines, and they even might be altered for a specific operation--that there ought to be a clear understanding between FBI operators, the agents, and the attorneys with the Strike Force. It seems to me they ought to review them together and say, 'These are the rules of this particular game that we are playing." Senate Select Committee Transcripts, note 1 supra, p. 60 July 29, 1982.

153/ The current Attorney General's Guidelines on FBI Use of Informants and Confidential Sources (December 2, 1980) require a suitability determination to be made. Paragraph D. p. 2. What is troubling about the guidelines is that there is no indication of what "unsuitability" might be. For example, there is no outright prohibition on the use of an informant who has engaged in serious acts of violence or acted as an agent provocatur. Such standards should be included. Moreover, as Oliver B. Revell has testified, the suitability determination is not reviewed by the Justice Department Undercover Operations Review Committee. Testimony, Senate Select Committee Transcripts, note 1, supra, p.76-77 (July 20, 1982). How can the UORC even determine whether to rely on the information being supplied by the informant let alone that he or she will obey FBI or Justice Department rules? The UROC should review these determinations. Finally, there are no strict requirements that an informant be terminated if he violates guideline strictures (e.g. engages in violence, incites criminal acts). Termination standards should be included.

154/ See Prepared Statement of Philip B. Heymann, Unpublished Edwards Committee Hearings, note 1 supra June 3, 1982

155/ As Senator Huddleston recommends: "In any particular undercover operation...those who are the operators, the FBI agents, and the attorneys - Strike Force attorneys, the ones that are closest to the field and closest to the actual operation, that they, at least prior to and perhaps during the course of the operation, review those guidelines and make sure that they are both operating on the same wavelength." Senate Select Committee Transcripts, note 1 supra p. 152 (July 27, 1982) We would require FBI Headquarters and UROC representatives to participate in such ongoing reviews in major operations.

156/ See paragraph (B), Attorney General Undercover Operations Guidelines, (January 1981).

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[40-A] Senator **Mathias**. Thank you, Mr. Berman. It was well worth all of the time that was invested, so you needn't apologize for that.

First, I know that Senator Rudman is under some time constraint, so let me turn to him.

Senator **Rudman**. Mr. Berman, I appreciate your very excellent and detailed statement that you have submitted, and although I have not had an opportunity to read it completely, I certainly intend to. I know that you have been here or represented here for all of the hearings, and I think you make some excellent points.

Let me say to you that I believe that your fallback position of a more structured Undercover Review Committee with active representation in a variety of areas within the criminal justice system at the Federal level, is something that there might well be support of.

I understand what you say about the warrant and the judicial system review, and I might agree with you that some sort of review in that sense might not be a bad idea. Frankly, I would support it in the committee for a number of reasons, the most important reason being a practical one, and I think that this committee should come out with something of substance, and I do not think——

Mr. **Berman**. Well, I always take the position politically that if I started with an Undercover Review Committee, you get [41] no review committee at all, I mean, in the legislative process; that we want the pressure of the fourth amendment implications of this technique before the Congress, and by making our principal position that a warrant should be required—and it may never in the life of this country, but we hope someday it will—we think that we force at least attention on the fourth amendment implications. But given the fact that the courts give such leeway, and the guidelines give such leeway for people to operate at the field level without any supervision at Headquarters level, I think would be a big step forward.

Senator **Rudman**. You would feel, I would expect as I do, that in this sort of a committee, or even if it had been a mandatory review at the highest levels—and I do not agree with Professor Kaplan that the Director of the FBI is so busy that on highly sensitive matters, he cannot review—I think if there had been a review at higher levels that were more responsible, that some of the things that we saw happen, that I believe were deplorable, would not have happened.

Mr. **Berman**. A high level review at the initiation of the shift to New Jersey or the shift to Congress would have brought, hopefully, a documented record up about what did they have, and people would have realized that it was Weinberg himself who was out there in September—hopefully, contemporaneous tapes being transcribed—that he was out there in [42] September and October, looking for politicians, and you would say, "Where? What? What is this all about?" Taking the targeting of everybody that Silvestri brought into the Undercover Operations Review Committee would at least have appraised him that he struck out five times in a row, and they maybe would not have gotten to Senator Pressler, and they certainly would not have allowed the investigation which occurred after that, based on a Silvestri allegation, which went after a chairman of a prominent committee in the House to go forward. Now——

Senator RUDMAN. Now, certainly, you were here for Mr. Criden's testimony——

Mr. BERMAN. Yes, I was.

Senator RUDMAN [continuing]. And had anyone at the high level of the Bureau, even one person in a position of high responsibility, had known what was going on there, I think that the brakes would have been applied. I think essentially, we had with Mr. Criden's testimony, if I recall correctly, we had Mr. Criden almost running what I would call, for lack of a better word, kind of a booking service; get a Congressman, get $5,000. I mean, it was like calling around the country to find out who knew people in the Congress. Certainly, this had to go far beyond any guidelines anyone at the higher levels of the FBI believed was possible, in terms of being implemented in the field.

[43] So I agree, and I know that the committee is going to be meeting with counsel, and I certainly, Mr. Chairman, agree with Mr. Berman and others, that although we probably cannot institutionalize it to the extent that maybe some of us might like to, if we could draw the net tighter in terms of who has the final responsibility, we will probably not have the kind of testimony that we had over the last several months.

Mr. BERMAN. Well, I hope that the standard issue is taken into consideration. Congress came very close to enacting such standards in the 96th Congress. It broke down because of elections and politics and so on, but the Director himself brought forward standards of a reasonable, full investigation standard, and there was a lot of stuff which made the charter seem very long. But I think that the standards that would be required—and guidelines could be issued to implement those standards—could be drafted in four pages. And we have drafted four pages, and the Director could take our draft and lower the standards so that law enforcement could go forward, but it could be done very simply.

Senator RUDMAN. Well, Mr. Berman, thank you very much, and thank you, Mr. Chairman, for the courtesy. I am going to have to leave at this point.

Senator MATHIAS. Well, once again, thank you for filling in in the crisis of the earlier afternoon.

Mr. Wheeler, I think you have some questions.

[44] Mr. WHEELER. Mr. Berman, I think you know from the public hearings that the principal point of concern that has been expressed by various members of the committee is the reliance of the FBI on the uncorroborated word of middlemen to go after various Members of Congress.

We have been struggling—the committee has and counsel have—with trying to figure out what can be done about that problem without unnecessarily impeding effective law enforcement. Now, you have tried to draw a distinction between a political corruption investigation such as Abscam and what you call a traditional "sting" operation. I am referring to pages 9 and 10 of your prepared statement. We are troubled by that, and I would like to explain to you why and ask you to comment on it, because you may be able to ease our burden here.

You first state that,

> The FBI did not passively wait in Abscam for the suspects to come forward, but actively encouraged unwitting middlemen who believed they were dealing with Arab sheiks to bring politicians to meetings for the purpose of offering them bribe opportunities.

Now, we studied in addition to Abscam, as you know, several other undercover operations. One of them was a DEA operation called Scorpion. Scorpion was a situation in which the Drug Enforcement Administration set up a storefront, and they sold legitimate chemicals that could be used either for legitimate purposes, or they could be used to produce [45] illicit drugs. And they advertised the opening of this company in, among other places, a magazine that you know of called High Times which is purchased by people who are regular drug users, among others.

Now, when a person walked in the door or placed a telephone call for an order at this DEA storefront, the DEA person manning the store did not know whether the call was from someone or the order was being placed by someone who wanted to use the drugs for legitimate or illegitimate purposes. In order to determine whether to sell the drugs to the person and whether to pursue that activity and find out whether the person was connected to an illegitimate activity, the DEA operative in that case had to make some inquiries.

Now, I submit to you, Mr. Berman, that that really is no different from Abscam, because again, there you have the person coming into the DEA storefront, and in order to determine what is going on, the DEA operative has to ask some questions. When the Congressman shows up at Abscam, usually for Agent Anthony Amoroso to know whether to offer a bribe, he has to ask some questions, which he did in every instance, to try to figure out, does this person know why he is here; specifically, is he here for a legitimate or illegitimate purpose.

Mr. Berman. The answer to that is that in Abscam, there was an effort made, and it involved another safeguard, which is to make clear that the opportunity that someone was being [46] brought to or who came in, is an illegal one, that it was clearly illegal.

What troubles me about, while there is this questioning that goes on with someone who comes into this operation that can either be illegal or legal purposes, is not quite the intrusive video cameras on the agents in the back, but it could be. So let us structure it that way. I am troubled by setting up that kind of——

Mr. Wheeler. And there was. There was a videotape.

Mr. Berman. In my statement, I point out that I endorse the other safeguards that were in Abscam, which made clear that a creation of an opportunity is real, and that it was clear to whoever came in that it was a corrupt transaction. Those came into play after an invasion of privacy occurred, but it protects against entrapment. I focus on trying to keep people out of that situation at all. What I am troubled about is setting up traps like this where both innocent people who want chemicals and other who want drugs are allowed to come into an ambiguous situation where the FBI sets up those inducements. I think that that is a troublesome use of the undercover technique. That is my real answer.

Mr. **Wheeler**. So your answer is you would have trouble with the DEA front as well as with Abscam.

Mr. **Berman**. I do not think "stings" should be set up that way. I think a "sting" should be where you stand out on [47] 14th Street, maybe, where they sell drugs, and you sell drugs there, and no reasonable person will believe that you are buying anything else but drugs at that corner. You are not buying chemicals or anything else for any other purpose. But you have ambiguous situations, like you open up a storefront which sells records and pirated records, and you are trying to feel people out; I think that is an intrusion on privacy and a targeting of innocent people. I think it is the same problem if you had a drug bust where you are standing on 14th Street and then another undercover operation where you have an allegation that Fremont High is into drugs, and the FBI sends an undercover operator just simply to wander around the campus, checking and testing people out. I think that that is the kind of technique which is violative of civil liberties and very dangerous for this country to endorse and authorize.

Mr. **Wheeler**. And just to even further clarify your position, although I think it is getting very clear, in Operation Lobster—you know the operation I am talking about, where there was an established pattern of hijacking in the Northeast, and the FBI set up a storefront fencing operation, and people who came in could have been selling hijacked goods, or they could have been selling legitimate goods; one did not know until one asked a couple of questions—I take it again——

Mr. **Berman**. I have trouble with that.

[48] Mr. **Wheeler** [continuing]. You would have trouble with that operation.

Mr. **Berman**. I would have trouble with that operation.

Mr. **Wheeler**. And my last question for you, Mr. Berman, deals with the question of a change in the focus of the operation, because again, I think this is probably the second question that has most troubled us and the members of the committee, in trying to figure our how to address the problems that arose in Abscam. Specifically, you recommend—and it is a very understandable recommendation—that before the focus of an operation can change, there must be approval through, let us say, the undercover operations review committee. The question is, in Abscam—and let us take the asylum scenario—is when should that have been done. It is very easy to say that in the abstract, you see; it is tough to put into practice, because let us assume that the Abscam scenario was spontaneously spun out by Tony Amoroso as the FBI claims, on July 26, 1979, on the "Left Hand," and all that was responded to Amoroso at the time was simply Errichetti and Criden saying, "Oh, that is interest," and nothing else happened. Four days later, Weinberg gets a call from, let us say, Errichetti, saying, "I have a Congressman who can help you out on that matter we talked about."

Now, as between those two points in time; namely, after the asylum scenario is simply mentioned, and the point in time [49] when Errichetti comes back with a concrete name, is it your position that when it was simply spun out on the 26th, that was when Amoroso had to go to the headquarters and say, "Here is something that I said. Nothing has come of it yet, but because it is a new scenario that has never been talked about, I need to get approval?"

Mr. **Berman**. I think so. First of all, it was not spun out on the 26th——

Mr. **Wheeler**. I am saying hypothetically, hypothetically.

Mr. **Berman**. Hypothetically, it was more than spinning it out, because it was Agent Amoroso with a whole bunch of middlemen in that room who, when they left that room, did not just have a theory; they were looking for Congressmen. That launched that investigation. It seems to me that when Agent Amoroso, whenever he came up with that idea and said, "I have got a new scenario, and I am going after Congress or immigration officials, because I think that something is going on down there," there should be a review before those middlemen were ever allowed on that boat and that scenario floated. That would have been up here at headquarters level, and they would have asked, "Why are we doing this?" And if we got the kind of answers, as Mr. Puccio said, "Well, I read these rumors. There was a newspaper story on 1976 about Helstoski. It sounded like a great, big, corrupt area." Or, "Koreagate just happened." I think people at the authorizing level should **[50]** have asked and would have asked, "What has that got to do with ongoing patterns of criminal activity in the Congress today?"

Mr. **Wheeler**. Well, you understand, though, that the ongoing——

Senator **Mathias**. I just want to say that the committee is ignoring that pun about "floating the scenario."

Mr. **Wheeler** [continuing]. The ongoing pattern of criminal activity is not something that appears in the guidelines. That was the testimony of Phil Heymann, who made that statement. All that the criminal investigation guidelines require is reasonable suspicion that a Federal crime has been, is being, or will be committed.

Mr. **Berman**. No, no, the guidelines do not even require that.

Mr. **Wheeler**. To open an investigation.

Mr. **Berman**. No, no, to open an investigation using an undercover operation, to my reading of the guidelines, and I do believe you have to—and I am not a Talmudic scholar, and that is what you really need here—but these guidelines permit an undercover operation to be used in an inquiry stage under the general criminal investigative guidelines, based on a mere allegation. Now, the section (j) standard does not require a reasonable suspicion of a crime. It requires—the substitution standard that Phil Heymann was talking about is that there is a reasonable indication that the undercover **[51]** operation will reveal illegal activities, and he says that is where the pattern is.

I think if they mean "pattern," we recommend, "Well, let us say 'pattern' ", and put it back in.

Mr. **Wheeler**. What I am suggesting to you, though, is that that is an alternative. It can be just a classic criminal investigation under the criminal investigative guidelines of an individual.

Now, when Errichetti comes back to Weinberg and says, "I have a guy, his name is Myers," we are not talking at that point about going after Congress as a group. We are talking about an individual, and you can open a criminal investigation of an individual under the criminal investigation guidelines if you have reason to believe that a Federal crime has been, is being, or will be committed, and at this point, if you get Errichetti to say, "Here are the facts on which I rely," isn't that enough?

Mr. Berman. Well, first of all, if that were the standard—first of all, let us hypothetically say that would be the standard of an individual investigation. I am still saying that that is not the standard and the guidelines. But let us assume by either some change in the guidelines have put in the standard that reasonable suspicion was required—is that enough. The middleman comes in and he says, "I've got a Congressman." If it was Silvestri coming in, and we knew [52] something about his past record, I do not think it would be enough, because he had proven unreliable. I would like to know what the track record of that middleman is. I would like to do some probing of him.

I think that maybe in hindsight, it is tough to criticize the FBI for not coming up with alternative scenarios and backup positions—I understand that. But in terms of if they were operating under a full investigation standard, I think they could have developed *Spinelli-Aguilar*-type questioning without blowing the cover of an investigation, and that a change in the standards would require and make them think through that, because they will not bring law enforcement to an end. They will try and deal imaginatively with standards which are more protective of civil liberties.

Mr. Wheeler. Thank you, Mr. Berman.

Thank you, Mr. Chairman.

Senator Mathias. Mr. Berman, you and Mr. Feinberg put your fingers on the same weak place, really; it is in the review operation here, isn't that true?

Mr. Berman. Well, I think there are a number of weak places, but with the standards—and we do not think management solves it all—but with a change in standards and a change in the review process and both, at least, basically, put into statutory form—and if you want to throw in our warrant, throw that in—but at least those first three are [53] the essential recommendations we are making, and unless they are done that way, I think it will be an illusory and temporary and transitory change in undercover operation.

Senator Mathias. Well, I think those are very positive and specific and constructive suggestions.

Mr. Berman. I do not think there is any way around the need for legislation here. One more observation. When we were dealing with the FBI charter, the Bureau came forward with solid recommendations, and they did not want to get into too much detail, and we agreed with that—the charter should only set out basic standards and principles and leave the rest to guidelines. Now, the argument is being made that the guidelines are too detailed, and we ought to in fact get rid of some of these guidelines; it is too complicated, too many pages, and that it is too complicated already. I think that basic standards and guidelines to implement them, basic standards in the charter, are absolutely essential.

We have not talked about whether civil remedies are needed to enforce, but that is in our statement, and I am sure that the committee can mull those over, too, as they go forward.

Senator MATHIAS. Well, I think your observations are going to be very helpful to us. The hearings, of course, have been the interesting and pleasant and entertaining part of this job, and we will shortly conclude the hearings after Judge Webster visits us, and then we will have to really get down to [54] the hard work of making the policy decisions. And I think that you and the other witnesses this afternoon have been extraordinarily helpful in focusing us on that particular task.

Mr. BERMAN. The ACLU holds itself open on any other questions, any other submissions you would like from us, and any help that we can provide within our power, we will certainly be as cooperative as we can.

Senator MATHIAS. Well, that is a very generous offer, and it may turn out to be a dangerous offer, because we may accept it.

Mr. BERMAN. Well, I would not accept it; it might "deep-six" whatever recommendations you have, given the political climate. Please take them under consideration.

Senator MATHIAS. I will take that risk.

Thank you very much for being here.

Mr. BERMAN. Thank you, Senator.

Senator MATHIAS. We unfortunately were unable this afternoon to schedule all of the many witnesses who wanted to testify on this aspect of the proceedings. We did, however, have two statements, one from Professor Etzione, and one from Representative Don Edwards, which have been submitted to the committee, and without objection, they will be made a part of the record today.

[The following were received for the record:]

EXHIBIT 19

LET THERE BE MORE STINGS (FOR POLITICIANS)

(By Amitai Etzioni)

It's time we apply to politicians a notion they very fondly embrace when dealing with criminal members of other occupational groups: Let's be a bit less concerned with the rights of the criminals and more with those of the victims. let's be a bit less concerned with the exact ways corruption of elected public officials is uncovered—and much more concerned with reducing corruption in public life, of which we are all victims. One can argue about the legal fine print and question the use of "sleazy" intermediaries (and ask if they "contaminated" the FBI agents involved). One might favor letting a thousand crooked politicians reign freely, lest we entice one innocent representative into graft. However, in the societal reality in which we all must live, there are a multitude of needs and rights and they must somehow be kept in balance. We must worry both about the means used by law enforcement officers and the level of street crime and public corruption. Otherwise, we allow crime to govern in the streets—and corruption in Washington. This is not what we have been doing recently.

Ever since it came out that the FBI had been filming politicians pocketing bribes, embarrassed only by their pockets' lack of depth, there have been tirades from politicians, critical not of the callous equanimity with which members of Congress took monies in violation of their sworn oath, but of the exact ways the politicians were snared. Senator John Stennis described the conduct of the FBI as a "national disgrace".

Las Vegas' mayor, Bill Briare, on discovering an FBI sting on his turf (politicians accepting bribes to change zoning variances) likened the FBI to the KGB. While sting operations have been going on for years against other groups—not just drug peddlers and fences, but also city health and housing inspectors, and Johns in hot pursuit of hookers—never has the wail of criticism and the clamor about legal, ethical, and procedural issues been so high-pitched as since seven members of Congress walked into a trap initially set for art swindlers. The FBI has been subjected to one hostile hearing, chaired by Congressman Don Edwards, and another, hardly supportive, chaired by Senator Charles McC. Mathias.

There is no question that sting operations raise a host of issues not faced by routine catch-the-crook-red-handed police work. One problem is a matter of definition. The FBI is not allowed to entrap people; that is, to induce anyone to commit a criminal act he or she was not otherwise predisposed to commit. The FBI has been flat-footed in its effort to explain how sting Operations differ from entrapment. It has dealt with the issue largely by issuing very detailed do's and don'ts for its agents, guidelines that are too complex and technical for the media, and that are likely to be violated on one point or another when an agent cannot fully adhere to what amounts to 18 pages of single-spaced strictures.

The main point, though, is clear. sting operations create opportunites for people predisposed to violate the law to do so under circumstances where it is relatively easy to document their act beyond reasonable doubt (on camera and in the presence of several law enforcement officers). Innocent people do not peddle stolen goods to fences, look for drug dealers, or offer Arab sheiks favors in Congress. A Sting is like selling condoms in a drug store—not distributing them to sub-teenagers after a class in sex education.

Another problem is the use of intermediaries. The FBI came under criticism because it used crooks to make known the availability of bribes. It seems want ads would not do. Routine means of police work are difficult to apply in the corridors of Congress, and "clean" intermediaries are not credible bait. And, as the director of the FBI pointed out, "sleazy" intermediaries do serve as a fair warning to innocent people: stay away. Those who fail to heed it are not fully intent on keeping their public life above board. In two instances the intermediaries committed crimes while working for the FBI; one has been jailed and the other is being tried. Their victims are being compensated (loss of money, not life or limb is at issue), as they ought to be. In future sting operations, the FBI should take greater pains to control the behavior of these characters, but one cannot expect that this will be accomplished with a full measure of success.

A third problem, it has been alleged, is that Sting operations will make innocent citizens go in fear that Big Brother is watching at every stop at the butcher or baker shop. This notion is ludicrous. No sign of such fear has been in evidence since Abscam. Indeed, all the people I checked with said they would much rather see more police surveillance than the current climate of fear of crime, and the sense that politicians can pursue bribes with impunity. If we had many hundreds of Sting operations going on, with citizens hauled in daily, say for not reporting income in the "underground" economy, one can imagine that a point of intimidation might be reached. Today the climate is much closer to the extreme opposite: the crooks know no fear, and the citizens worry about the effects of their freewheeling.

The critical issue raised by Sting operations is whether or not they are aimed at persons "predisposed" to crime, not involving innocent fellow citizens. How can one determine that an individual is predisposed? One way is to watch what that person does when presented with the opportunity to commit an illegal act, without duress. If he or she is eager and solicitous, as members of Congress were on Abscam tapes, it helps to clarify the matter, but such glee (or even an unaffected, business-as-usual manner) is not essential. Voluntarily pocketing the bribe provides a sufficient clincher. A person not predisposed would walk away when the illegal, unethical, and unsavory nature of the situation dawned. Senator Pressler did exactly that. It is hard to believe that other representatives just could not find the door. And Rep. Kelly's explanation that he pocketed the money in order to conduct his own investigation (of which he notified no one) only tells you how cynical some politicians are and how gullible they believe the public to be.

Another way to look at predisposition, is to study the frequency of violations in the group to which an individual belongs. The fact that over the last generation, nearly 50 members of Congress faced criminal charges, and most were convicted, strongly suggests that this group is not one which knows no harm. In the two hearings members of Congress have conducted on Abscam, no attempt has been made to determine how predisposed members of Congress are to corruption, how widespread the malaise, and hence how urgently they need the help of the FBI to clean up their house.

I do not have statistics on the subject either. But one cannot wholly ignore the implications of the fact that most of those approached by the FBI intermediaries were more than willing, or that there are numerous other reports of wrongdoing by members of Congress from ex-wives, jilted mistresses, former aides, and investigative reporters. That is, while one cannot measure the fire, there sure as hell is a lot of smoke.

Equally important is that Congressional committees have in the past been extremely reluctant to develop or enforce ethical codes, and quite willing to dilute and roll back whatever standards they did come up with. I would have found the Abscam hearings much more satisfying, if the criticism of the FBI's procedures had been accompanied by a serious drive for Congress to examine its own members and prevent future abuses. In the fact of the continued extreme reluctance—to put it mildly—of Congress to clean up its own house, the FBI should be directed to concentrate on crooked politicians rather than being driven out of this business. Indeed, it was one of the achievements of the "New" (post-Hoover) FBI that it changed its priorities to turn from almost exclusive preoccupation with street crime to embrace white-collar crime and elected crooks as well. I see no public purpose served by a return to Hoover's priorities.

To maintain and tighten the Sting procedures a suggestion advanced by Professor James Q. Wilson of Harvard should be followed. Under it, a small panel of judges would review all new Sting techniques before they are employed. The panel would also help ensure that Sting operations are set up only for groups that warrant a reasonable level of suspicion, and do not turn into fishing expeditions among innocent citizens. And tighter control of the intermediaries is called for.

At the same time, it is essential that efforts to sanitize Sting operations not be used to blunt them, or limit them to groups other than elected officials. The corruption of public officials is particularly harmful. They serve as the public's role model. If they are corrupt, millions of citizens feel licensed to indulge themselves when possible, say, by resorting to the underground economy.

Moreover, the public feels cheated and jilted when their elected representatives are found on the take and wail about the way they were caught instead of regretting the ease with which they yielded to temptation. True, American distrust of public officials and authority has many historical roots as well as the recent ones. But given the present high level of distrust, the last thing the country needs is for politicians to slam the FBI instead of welcoming and augmenting efforts to straighten out our public life.

EXHIBIT 20

WORRY THAT YOU COULD BE A VICTIM

(By Don Edwards)

In day to day criminal investigations, J. Edgar Hoover had a rule against the FBI immersing itself in the underworld to catch crooks, and for good reason: He worried about his agents being corrupted through association with hoods. For the same reason he resisted FBI responsibility for drug enforcement, which often means planting agents in drug rings.

In recent years, however, Hoover's successors have been going all out in the opposite direction. Very much "in" at the FBI today are stings, scams, infiltrations, the testing of public officials with bribe offers, and the use of "middlemen" to go after anyone who might succumb to invitations to commit a crime.

The FBI budget for undercover work has jumped from $1 million in 1977 to a requested $6 million in 1982. Undercover operations have climbed from 53 in 1977 to an average of 300 yearly between 1978 and 1981, a stunning increase that is applauded by the Reagan administration.

Law enforcement "must interject its agents into the midst of corrupt transactions," Attorney General William French Smith has declared. "It must feign the role of corrupt participant. It must 'go undercover.'"

Seemingly forgotten is what happened when Hoover broke his own rule and encouraged FBI agents to go undercover en masse to investigate "subversive activities." As a Senate committee investigation of those days found:

"The abusive techniques used by the FBI in COINTELPRO from 1956 to 1971 included violations of both federal and state statutes prohibiting mail fraud, wire fraud, incitement to violence, sending obscene material through the mail, and extortion.

"The government, operating primarily through secret informants, but also using other intrusive techniques such as wiretaps, microphone 'bugs,' surreptitious mail opening, and break-ins, has swept in vast amounts of information about the personal lives, views and associations of American citizens.

"Unsavory and vicious tactics have been employed—including anonymous attempts to break up marriages, disrupt meetings, ostracize persons from their professions, and provoke target groups into rivalries that might result in deaths."

These and other disclosures resulted in elimination of most of the FBI's domestic intelligence program. Today, instead of hundreds of thousands of open FBI files on American citizens, there are perhaps 100—all connected with real criminal activity.

There is no doubt that undercover methods can be extraordinarily effective at times in snaring those engaged in both violent and economic crimes, from narcotics trafficking, labor racketeering and truck hijacking to arson, white-collar frauds and political corruption. But we badly need a careful and dispassionate examination of the immense spread of such operations by federal prosecutors and by the FBI—indeed, by all U.S. police agencies—and of the consequences.

One reads regularly of new problems. Innocent Americans are claiming that they have been severely damaged by scams and off shoots of scams. Hundreds of millions of dollars in lawsuits have been filed against the government. Corruption in the FBI has been charged. And this is to say little of the damage done to the very fabric of our society when undercover operations are not tightly controlled.

Consider how innocent people can be hurt.

In "Operation Frontload," the FBI employed a convicted criminal to investigate the construction industry. To obtain certification for him as an insurance agent with the power to issue bonds, the FBI told the insurance company he was a former police officer and "a straight arrow." The insurance company wasn't told his real name, his criminal record, or that he had agreed to be an informer to avoid a nine-year prison sentence.

The result: The insurance company claims the FBI's man issued fake performance bonds and cost the insurance company and the insurance broker more than $60 million in business losses.

In fact, 12 lawsuits seeking damages of more than $340 million have been filed just as a result of "Operation Frontload." The government has already paid more than $800,000 in settlements.

Similary, in Abscam, FBI middleman Joseph Meltzer used the scam framework of Abdul Enterprises, Inc. to work private swindles of his own in California and Colorado. Fearful of blowing his cover, the FBI did not stop Meltzer's private cons. Innocent businessmen and women were swindled, reputations were ruined, and two of the victims contemplated suicide.

Or consider how law enforcers themselves can be corrupted.

In Chicago, a policeman posed as a pimp and infiltrated a prostitution ring. After the case was over, he continued his pimping and was suspended.

In Abscam the FBI agents supervising Mel Weinberg—the convicted swindler to whom the FBI paid more than $250,000—denied in affidavits that they had any business dealings with Weinberg. Later they admitted buying furniture, clothing, and books from Weinberg, and one agent admitted receiving an automobile from him. Marie Weinberg, Mel's wife, now deceased, also swore that her husband covered for the sexual escapades of agents.

That corruption of undercover agents happens from time to time, while unfortunate, is not surprising. The agents are put into criminal environments heavily infected with temptations and risks. They lack such usual controls as uniform, fixed place of work, and visible supervisor. They sometimes play crook, and each hour of the operation can make them more susceptible to the rationalization of illegal or immoral conduct. But the degree to which such corruption now seems to be occurring should be deeply troubling.

In short, everybody can lose in these operations—not least the FBI. As Harvard Prof. James Q. Wilson has remarked, J. Edgar Hoover "knew that public confidence in FBI agents was the bureau's principal investigative resource and that confidence should not be jeopardized by having agents appear as anything other than well-groomed, 'young executive' individuals with an impeccable reputation for integrity."

The classic FBI agent is neatly dressed, clean shaven, without paunch or scuffed shoes. He drives a four-door car that your teen-ager would borrow only in desperation. For more than half a century he, occasionally she, has been solving crimes with traditional skills developed and refined by the police of democratic countries—skills in interrogation, in following leads, and increasingly in the use of science and laboratories.

But that is not the picture of the FBI that has emerged from the surge of undercover scams.

The Justice Department has attempted to grapple with these issues through guidelines issued in 1981 by former Attorney General Benjamin Civiletti. While certainly a step in the right direction, the guidelines raise some serious questions of their own.

One reads with alarm, for example, a paragraph permitting the FBI director to authorize "otherwise illegal activity involving a significant risk of violence or physical injury to individuals." The same paragraph also allows illegal actions by undercover agents when necessary "to establish and maintain credibility or cover with persons associated with the criminal activity under investigation."

These extraordinary provisions seem to authorize the FBI director to approve any type of criminal activity by undercover agents—burglaries, assaults, even murders—when necessary to maintain cover.

Even the strictest guidelines, moreover, can be weakened at the whim of an attorney general. The guideline provisions on FBI antisubversive investigations, for example, are currently under assault by conservative columnists and politicians who view them as too restrictive. These critics would like the FBI to return to the days when hundreds of thousands of files were kept on "radicals" and "radical" organizations, with FBI-employed informants authorized to disrupt the groups.

To FBI Director William H. Webster's credit, he has so far resisted demands to weaken the guidelines, but what will happen in the future is far from certain.

We could learn a thing or two in this regard from some other nations with considerable success in combating crime while maintaining a free society.

Danish police, for example, use undercover agents, but only to gather information. In Denmark the offering of bribes by undercover police would be an unlawful or undesirable use of agent provocateurs. The Danish prosecutor cannot legally grant a person immunity from prosecution. Hence, an agent provocateur such as those used by the FBI in scams and stings would be punishable as an accessory to the planned or committed crime.

The rules in Sweden, Holland and Norway closely follow the Danish laws.

Nor are Japanese police permitted to go underground to fight crime. There the police, considered moral actors and models for the young, go to great lengths to be blameless citizens of the neighborhood, with members of the public considered assistants in reducing crime.

The fact is that it will be difficult and perhaps impossible, ever to resolve the issue of what the FBI or police can or cannot do in undercover work in this country by relying solely on guidelines and the bits of existing law.

Fundamental constitutional issues are at stake, in particular the First and Fourth Amendments.

The essence of the First Amendment is that speech must not be interfered with by the government, that Americans must be free to communicate with one another without the fear that a secret government agent has infiltrated their homes, offices, schools, churches, or political gatherings.

The Fourth Amendment guarantees that Americans are secure in their homes, persons and papers against unreasonable government searches. Ordinarily, when the police or FBI want to search your home or office or tap your telephone, they must obtain a warrant from a judge based on a finding of probable criminal behavior.

It is hard to imagine a more intrusive device than an informant hired by the police or FBI who worms his or her way into the target's confidence, who follows the target from place to place, who becomes a trusted friend or lover, who even encourages criminal conduct. Yet, precisely such practices are permitted under current law—with no requirement that the target be suspected of criminal activity.

While this government-directed conduct is significantly more intrusive than a telephone tap, the Supreme Court has not found such use of informants or middlemen to violate Fourth Amendment guarantees against government intrusion.

Undoubtedly there are undercover activities that would not require a warrant. Currently the Fourth Amendment is not construed to require a warrant in every case; a federal officer may search without a warrant while conducting a valid arrest, for example, when it is necessary to prevent the destruction of evidence or to seize weapons that might be used to assault the officer.

But no laws have been enacted in the United States to establish procedures for undercover activities and the use of informants, middlemen and agents provocateur. And it is procedure that spells much of the difference between rule by law and rule by whim or caprice. Most provisions of the Bill of Rights are "procedural."

Procedures that would resolve some of the problems discussed here clearly should be enacted into law by Congress. It is, of course, unrealistic to think that this will happen soon; the political climate is not right. But the examination must be continued, the evidence accumulated, the principles finely honed so that they are ready when the time is right.

In the meantime, we can only hope that we will not see many more innocent people hurt, more damage done to the reputation of the FBI and other law enforcement agencies, or more citizens afraid that government agents may be lurking in their homes, businesses and other corners of their private lives.

[55] Senator **Mathias**. There being no further business, the committee will stand in adjournment until Thursday at 10 a.m., at which time the witness will be Judge Webster, the Director of the Federal Bureau of Investigation.

[Whereupon, at 5:15 p.m., the committee was adjourned, to reconvene Thursday, September 30, 1982, at 10 a.m.]

[1] HEARING ON LAW ENFORCEMENT UNDERCOVER ACTIVITIES

THURSDAY, SEPTEMBER 30, 1982

U.S. Senate,
Select Committee To Study Law Enforcement
Undercover Activities of Components
of the Department of Justice,
Washington, D.C.

The committee met, pursuant to notice, at 10:10 a.m., in room 301, Russell Senate Office Building, Hon. Charles McC. Mathias, Jr., (chairman), presiding.

Present: Senators Mathias, Huddleston, Simpson, Rudman, Leahy, and DeConcini.

Staff present: James F. Neal, chief counsel; and Malcolm E. Wheeler, deputy chief counsel.

Senator Mathias. The committee will come to order.

We come today to the final scheduled public hearing before the committee addresses the job of preparing a final report to the Senate on the question of undercover investigations conducted by various components of the Department of Justice.

The witness today is Judge William H. Webster, the Director of the Federal Bureau of Investigation.

[2] Senate Resolution 350, which established this Select Committee, charged us with the study of all aspects of undercover operations conducted by various components of the Department of Justice which, of course, includes the Federal Bureau of Investigation. And I will take this opportunity, Judge Webster, to thank you for the cooperation that we have received from the Bureau, because we have been able to study in what I suspect is an unprecedented depth, several undercover operations conducted by the FBI, including Abscam, and Lobster and Labou and Frontload and Buyin.

We have also studied in lesser detail operations Goldcon and Palmscam. In conducting these studies, we have become familiar with the existing statutes, of course, including the constitutional provisions and the judicial decisions that authorize and which limit and restrict the FBI's use of undercover operations. As required by Resolution 350, we have examined the manner in which the FBI has initiated, approved, modified, managed, supervised, and terminated undercover operations over the past several years.

It is now time for us to direct our attention to paragraphs 11 and 14 of Resolution 350, which require us to consider whether there is a need for specific legislation to govern such law enforcement undercover activities and whether existing laws are adequate to safeguard the rights of American citizens, to provide proper control of undercover operations, [3] and to give appropriate authorization to engage in law enforcement undercover activities.

In addition, we have a few remaining questions about Abscam that we hope you are going to be able to answer.

First, however, let me turn to the vice chairman of the committee, Senator Huddleston.

Senator **HUDDLESTON**. Thank you very much, Mr. Chairman, and Judge Webster, I concur with what the chairman has said, and I look forward to your statement this morning.

There is just one point I want to make and that is, the committee's mandate goes far beyond just Abscam, and we have looked at other operations. As far as Abscam itself is concerned, the most important issues are not limited to the facts of that particular operation involving Congressmen, and I think we have made that point over and over.

The potential dangers to the rights of any innocent citizen are the most important concerns, I think. The role of the unsuspecting corrupt middleman in Abscam was one issue that we looked at very carefully. Any innocent citizen could be brought before the cameras and tested to see if he or she was interested in a crime if an unreliable corrupt middleman lied about that person.

Another issue is the standards for starting an operation or of moving it in a different direction once it has started. Abscam started out as an investigation in a clear-cut crime [4] problem area, but it changed direction without having to meet the same standard that was imposed at the beginning. As one FBI official testified, the question of bribery of Congressmen in immigration cases was a possible corrupt situation. Now, that might be enough to justify an investigation where Congress is concerned, but should the standard for an intrusive undercover investigation of any citizen be the mere possibility of a crime?

I hope we will have an opportunity to discuss these questions this morning so we can try to reach some agreement on fundamental standards of reasonableness and fairness for undercover operations.

The chairman has already pointed out the tremendous increase in this type of operation, the effectiveness of it. The American people want strong and effective law enforcement, and I think they want the FBI to use techniques like undercover operations when there is no other way to get evidence of serious criminal activity. But they also recognize the dangers that unlimited Government power can pose for the rights of the individual. That is why we have a Constitution and why we have a Bill of Rights and a system of checks and balances to protect the innocent as well as convict the guilty.

The courts have reviewed the cases of people who were prosecuted. This committee has had a different responsibility. We have looked at situations involving innocent persons who [5] were never even considered for prosecution but whose privacy was invaded and reputation jeopardized, or who suffered some financial losses because of the operations.

So, as we praise the FBI's effectiveness in combating crime, I think it is important that we do not overlook the potential risk to law-abiding citizens.

Mr. Chairman, I want to make one other comment at this particular time, because this may be our last opportunity to have the kind of audience that we have now. When this committee was formed, we were given a tremendous responsibility, a wide scope of responsibility, in looking into not just the Abscam operation, but all of the undercover operations of the FBI. We were also given a very parsimonious budget, and we recognized at the beginning that it was going to be difficult to conduct the kind of investigation that we all wanted, and have a quality staff that would be necessary within the limits of the appropriations that we were given. I just want to say that even if we had been given unlimited financial resources, we could not have secured a better team of counsel than this committee has had.

Mr. Neal and Mr. Wheeler took on this job knowing full well the financial restraints, and knowing the scope of it. I do not believe any counsel for any congressional committee has ever been more diligent or worked any harder and has ever done any better job in the time we have had and the resources we [6] have had in pulling together, the major questions and issues that needed to be discussed. And I just wanted to personally say publicly that I appreciate the time and the effort that they have given this task.

Thank you.

Senator MATHIAS. Thank you, Senator Huddleston. I think you have expressed the unanimous view of the committee.

Senator Simpson, do you want to say anything at this point?

Senator SIMPSON. No, Mr. Chairman, except to say that I have enjoyed my participation on this committee. I took a great interest in the FBI charter activities, as the Director will recall, and worked with him in that, and came to have a high regard for him. That is still very much the case. I think we have conducted a very thorough activity and investigation. We started in a very big room when we started this, and it got smaller and smaller as we continued, because it just was not there; there was not the depth of things there that I think we thought we might find.

There were some disturbing things there, and we will pinpoint those and share those with the public. Something was done, but basically, it was done within the basic framework of the way we would like to see things done, I guess I would say, but still, some things that are troubling.

And I want to particularly express my thanks to the [7] cochairman, who have conducted this with great patience and great skill and without attempt to dramatize or make this a dramatic type of situation. I have been proud to serve with both of them. And I, too, would join in saying that the counsel of this select group, Jim Neal and Malcolm Wheeler, have been extraordinary, even though the record will show that Neal and I both played ball at the University of Wyoming together—I wish that that was not spread upon the record—but that is when I had 260 pounds on me and had hair, but those days are gone.

So, let me say that indeed, that it has been a privilege, to watch these highly skilled practioners piece together what we needed to do to bring credibility to this gentleman's agency and to the U.S. Senate, and I thank you.

Senator **Mathias**. Senator Rudman, do you have an opening statement?

Senator **Rudman**. Only to say, Mr. Chairman, that I think under your leadership, to everyone's surprise and maybe someone's consternation, we will have finished our assignment for the Senate on time, within budget, with an absolute, totally zero amount of partisan bickering.

Senator **Mathias**. Thank you for those kind words. I hope that we will all agree on them when we finally hand in our report.

I have one item of housekeeping business since we have a quorum here, which I would like to, if Judge Webster will **[8]** bear with us, to take care of. There is before the committee a resolution to authorize inspection and receipt of tax records. The Senate adopted last night Senate Resolution 485, specifically authorizing this select committee to inspect and receive tax-related materials described in the resolution.

Members have a copy of this resolution. Is there any discussion? What is the will of the committee?

Senator **Huddleston**. I suggest we execute the resolution.

Senator **Mathias**. It has been moved by the Senator from Kentucky that we adopt the resolution. Is there any further discussion, or any objection?

[No response.]

Senator **Mathias**. Without objection, the resolution is adopted.

Judge Webster, I know that you have received copies of both Senate Resolution 350 and the rules of this committee, and you know that under those rules, all witnesses who appear before the committee are required to be sworn, so if you will stand and raise your right hand, do you swear that all the testimony which you are about to give before this committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. **Webster**. I do.

Senator **Mathias**. Would you like to make some statement yourself, Judge Webster, before we begin the questioning?

[9] STATEMENT OF HON. WILLIAM H. WEBSTER, DIRECTOR, FEDERAL BUREAU OF INVESTIGATION, U.S. DEPARTMENT OF JUSTICE

Mr. **Webster**. Thank you, Mr. Chairman, I would.

Today marks what I understand is the final day of scheduled testimony before this committee, and I am pleased to have been asked to appear before you.

The first thing I want to do is thank you, Mr. Chairman, and the members of this committee, Mr. Neal, and Mr. Wheeler, for the manner in which you have conducted these hearings. All of us in the FBI respect the courtesy you have displayed and the professional manner in which you have proceeded.

I trust that you have found us to be responsive to your requests for documents, briefings, and testimony. I am gratified by Mr. Neal's and Mr. Wheeler's statements for the record and what the chairman said this morning, that the FBI has been cooperative in this matter.

In fulfilling the duties and responsibilities placed upon you by Senate Resolution 350, you have throughly studied our undercover operations and the Abscam case in particular. You have heard the testimony of FBI agents and Department of Justice officials and prosecutors. The documentation in this case is extensive: there are tens of thousands of pages in FBI files, nearly 800 audiotapes and over 60 video tapes.

There has been a full congressional airing of this case. [10] This has been an informative and instructive experience for us, and I mean that sincerely. From my perspective, there are several conclusions which may be drawn from a comprehensive and objective anlysis of our undercover operations. Among them are the following:

First, the undercover technique, properly utilized, is a lawful and indispensable investigative tool.

Second, to achieve this proper utilization, considerable effort goes into the planning and control of our undercover operations and must go into them. Our operations are structured to satisfy the requirements of the Constitution, statutes, and guidelines applicable to undercover operations, the use of informants, and criminal investigations.

Third, our undercover operations are highly productive. While statistics alone cannot tell the whole story, they can be illuminating. In fiscal years 1980 and 1981, operations led to recoveries worth over $109 million and prevented substantial losses to the public. Convictions arising from these operations in those fiscal years totaled over 1,000 while funding during this period for undercover operations, exclusive of personnel costs, was only $7.5 million. I think we gave the American people a good return on their investment.

Unfortunately, all the public attention focused on Abscam has left in the shadows the Bureau's other significant achievements in Corcom, Lobster, Unirac, Bancoshares, and a [11] host of other cases. There have been other undercover operations involving much the same techniques as employed in Abscam. These techniques have survived judicial scrutiny. Aside from the involvement of certain Members of Congress, I question whether there is anything truly unique about the Abscam investigation.

The objectives in Abscam were the same as those in every criminal investigation. We pursued allegations of criminality and developed evidence of criminal activity. In the process, we worked closely with attorneys in the Department of Justice, who provided advice and counsel both at Headquarters and in the field. On the basis of the evidence presented, the Department exercised its prosecutive discretion and vigorously prosecuted those against whom indictments were returned.

The Abscam cases have been tried before nine separate juries, each of which observed the witnesses, heard the testimony on direct and cross-examination, saw the video tapes and other evidence, and listened to the arguments of able attorneys. These juries returned guilty verdicts against all 19 defendants in these cases.

The cases have received intense judical review at the trial and appellate levels. Judge Pratt, for example, conducted a due process hearing that lasted 16 days. He characterized those proceedings as resembling more a series of depositions and requests for document production in a [12] securities fraud or antitrust case than a hearing to determine whether the Government had violated the due process clause. Despite this mammoth effort, he found no basis to reverse the convictions on this ground.

Every conviction argued on appeal has been affirmed. At the present time, only one conviction—that of Congressman Kelly—remains set aside, and that action is pending on appeal by the Government. This committee, the Department of Justice, and the Nation has had the benefit of five opinions by the Second Circuit and one opinion by the Third Circuit on legal issues raised at trial.

After reviewing these decisions and our record in the Abscam investigation, I am convinced that the FBI selectively targeted no public official and violated no constitutional safeguards. The preliminary report of your staff counsel appears consistent with these conclusions.

Mr. Chairman, I do not assert that there were no problems during this lengthy and complex investigation, or that, from 20/20 hindsight, there were not ways in which the investigation could have been improved. If, however, we have confidence in the judicial process, it seems fair to say that overall this investigation has been a service to the Nation.

I think it may be constructive to look briefly at our progress in the use of the undercover techniques. While there has been some sporadic use of the undercover technique [13] throughout FBI history, the long-term application was initiated about a decade ago in efforts to penetrate an organized crime family. About this time, local authorities, with the support of the Law Enforcement Assistance Administration, were addressing property crimes through undercover work. To solve some interstate property crimes, the FBI joined with local authorities.

Soon after I became Director, we began exploring ways to apply the undercover technique to other types of criminal cases. While we certainly did not begin as experts, we did not start at square one, either. We had learned from our own experience and from our fellow law enforcement officers at the State and local level. We recognized that the traditional investigative approach would not work in certain types of cases. It was apparent that undercover operations were essential if we were to be successful in investigating consensual crimes, especially public corruption cases.

Public corruption is often closely related to organized crime, drug trafficking, and major fraud against the Government cases. Public corruption cases are also among the most difficult cases to solve. The 11th Circuit recently said in *Baucum* v. *Martin*, and I quote:

> The analogy between narcotics and official corruption cases is not a strained one, both are often very difficult to make. A street wise wary narcotics peddler, and particularly his supplier, can be vexing [14] targets for narcotics prosecutions. Then there may be the wary public official, educated, possibly an attorney, who may only very carefully risk his reputation and his office out of avarice. Like the narcotics supplier, he may also deal only through a trusted intermediary. A dishonest public official who profanes his official trust may do more harm to our society than common criminals, and may be much more difficult to investigate and convict.

And I quote it because I could not have said it better.

Our increased use of the undercover technique presented us with novel problems. In the early stages, we called upon our own Legal Counsel Division and the Department of Justice to guide us on such questions as whether we could sell stolen property to criminal elements in a fencing operation; whether we could indemnify the lawful owner in such a case; whether the Government would incur civil liability if a cooperating witness falsely appraised property; whether we would violate the copyright laws in a bootleg tape operation; to what extent an undercover agent could respond to criminal offense outside the statutory jurisdiction of the FBI; whether we could deposit public funds in bank accounts in the course of undercover operations; whether an undercover agent could work as an employee of a private business or as an independent contractor; whether we could engage in a venture involving the interstate transportation of pornographic video cassettes, and a host of [15] other sensitive issues.

The time and effort devoted to the resolution of these problems have paid dividends. There has been much progress in the last 4 years as we developed institutional awareness of problem areas and methods to deal with them. The process continues.

Thus, I would urge that examining one case in detail be done only with the realization that any one case is but a part of an evolutionary process.

Internal rules and practices to control these operations have emerged from this process. We added them to the constitutional and statutory controls already in place and to the preexisting informant guidelines. In early 1981, many of these procedures were incorporated into the Attorney General's guidelines for undercover work.

Guidelines should not be so tightly drawn that they unduly encumber our legitimate law enforcement responsibilities. Nor should they be so rigid and detailed that a wary criminal can measure our progress by carefully crafted responses to our initiatives.

We must recognize that situations will arise in the field which demand that quick judgment calls be made. The factors which assist in decisionmaking cannot be reduced to a laundry list. We attempt to prepare agents to make sound decisions and we issue guidelines, the Attorney General issues guidelines, to [16] assist them.

It is within the framework of these guidelines that our operations are planned and implemented. In general, undercover projects originate in our field offices and are designed to investigate a particular crime problem or groups of individuals suspected of participating in illegal activity. Prior to the submission of an undercover proposal to FBI Headquarters, the proposal must be approved at the field office level by the field supervisor, the principal legal adviser, the special agent in charge, and have the concurrence of Strike Force Attorney's or U.S. Attorney's Office in that region. The approval must include comments and observations regarding the legal and ethical considerations involved in the proposed activity. In addition, the project's goals, the worthiness of its objectives, its costs, and whether the tactics proposed might involve entrapment, due process violations, or create an unreasonable potential for economic loss to either individuals or the general community must be addressed in a proposal.

Many projects are rejected in the field or by FBI Headquarters supervisors after their initial review. Those that meet the basic requirements and which appear to offer potential to accomplish the objectives are submitted to the Criminal Undercover Operations Review Committee.

The committee includes FBI Headquarters officials from [17] the disciplines involved, including representatives from the Legal Counsel Division and representatives from the Department of Justice who consider any legal issues. It was established by me in the fall of 1978 to provide an ongoing institutionalized method of evaluating proposals, recognizing potential pitfalls, and giving guidance on such matters as avoiding injury to third parties. This committee has become my main advisory board in the approval process for undercover operations. The committee thoroughly reviews the field's submission and attempts to look at the project from other angles, including the general propriety of its approach. After this review, many proposals are sent back to the drawing board.

If the committee makes the determination that the legal and ethical considerations as well as operational aspects warrant approval of an undercover proposal, the committee will make such a recommendation to the Assistant Director of the Criminal Investigative Division or, where particularly sensitive circumstances are involved, to me.

No operation is approved for more than 6 months, and many are approved with the stipulation that an interim progress report be made to the committee. Undercover operations requiring a time period of more than 6 months must be represented to the committee for subsequent approval. In addition, special agent supervisors at headquarters provide continuing supervision of those operations which are approved. [18] Since the implementation of the committee, problems which could arise during the course of an undercover operation have been more readily recognized, and the possibility of harm to other third parties as a result of an undercover operation has been greatly minimized.

Our undercover activities extend across the range of our investigative responsibilities, from conventional property sting operations to more sophisticated investigations of organized crime, foreign counterintelligence, public corruption, and terrorism. We expect the undercover agent, through selection, training and discipline, to be absolutely trustworthy. We can and do supervise their undercover activities.

We must also work with cooperating witnesses, in order to identify the criminal actors and provide credibility for the undercover scenario. In addition, in criminal enterprises, it is not uncommon for us to deal with lower-level participants in the criminal activity or intermediaries. It is through these intermediaries or brokers that we find our way to the major players in these investigations. But, while we use the information from these individuals to reach the higher levels, it must be remembered that these individuals are themselves the subjects of the investigation and are not aware that they are dealing with the FBI.

In dealing with cooperating witnesses and in utilizing [19] unwitting corrupt intermediaries, the greatest possible care must be exercised to prevent a perversion of the operation by their activities. Any procedures intended to control the activities of these individuals, however, must be plausible within the context of the undercover scenario and what is reasonable in the real world.

We can and we do provide for management of informants and cooperating witnesses. Although we take steps to control their activities, some risk is inevitable in the use of informants and cooperating witnesses who work for us, and more particularly, corrupt influence peddlers whom we investigate and who lead us to others. But the risks are worthy of the goals and are not too heavy a price to pay for results which otherwise would not be obtainable.

As Congress has recognized, undercover operations pose unique problems that must be addressed by specific legislation. As early as 1978, the FBI was authorized by the Department of Justice Appropriation Authorization Act, fiscal year 1979, to use appropriated funds to enter into leases, deposit appropriated funds and income from undercover operations in banks or other financial institutions, and use proceeds generated by undercover operations to offset necessary and reasonable expenses of the operations. In every succeeding year up to February 1, 1982, Congress has, by authorization act or continuing resolution, extended these authorities.

[20] Unfortunately, there have been lapses in the authorization process and consequently in our undercover authorities. The most serious of these has extended from February 1, 1982, to the present.

It is clear that, while convenient, yearly authorization bills are not the appropriate vehicle for these undercover authorities. Too much is at stake. For example, current operations are utilizing business fronts which operate normal business entities. This requires the receipt of income and disbursement of expenditures on a day-to-day basis. The inability to deposit in excess of $100,000 in a bank account could endanger any operation requiring "show money." More importantly, because of the violent nature of some of our subjects, particularly in the organized criminal and drug trafficking communities, the safety of FBI agents could be jeopardized.

I recommend that the undercover authorities I have described be enacted into permanent law. In this regard, the Department of Justice will be submitting appropriate legislation for consideration by the 98th Congress.

I would like to address an issue that the committee has touched upon in previous hearings: indemnification. Participation in undercover operations by persons engaged in various professions and business pursuits is vital to the success of FBI undercover operations. The cooperation [21] extended by legitimate businesses has assured our agents the necessary cover and credibility in carrying out their undercover mission. For example, various banks have provided wire transfer service of large sums of money in narcotics investigations, such as Bancoshares. Airlines, investment corporations, oil companies, and other responsible business entities have made it possible to successfully investigate and prosecute complicated economic crimes, public corruption, and labor racketeering cases that would otherwise be unapproachable due to the necessity of being an "insider" to illegal activity.

In return for the services provided to the FBI by these legitimate concerns, an indemnification agreement is often sought by the cooperating party. They seek assurances that the FBI or the Department of Justice will defend all actions for damages arising out of acts of agents of the FBI or activities initiated by the cooperative party in furtherance of the undercover operation.

Cooperative parties presently assume economic and professional risks on behalf of the Government, and in return, the FBI can offer them only a one-sided personal service agreement. These agreements generally minimize the obligations and liability of the Government, but provide little protection to the individual. Potential civil liability often influences a decision to assist the Government.

[22] The Department of Justice is considering the possibility of legislation in this area and will be providing the Congress with appropriate recommendations.

Mr. Chairman, that ends my prepared statement. In closing, I want to thank you sincerely for the opportunity to appear before this committee and discuss our use of the undercover technique.

I am now prepared to answer your questions.

Senator MATHIAS. Thank you very much, Judge Webster.

Let me first note that there are several members of the committee who have shown an intense interest in this investigation and who have pressing duties on the floor, and so, for that reason, I am going to direct that the record be kept open for several days so that they may have an opportunity to submit written questions, if they would wish to do so, and we will request you to answer those to be included as part of the record.

Second, I have asked counsel to prepare some detailed questions that we feel need to be asked with respect to the various operations that we have studied, but before they propound those questions, I have one or two broad, general questions, and other members of the committee may have similar general questions, which we will ask at this time.

I note from your statement that you are a man of consistency; that what you say today reflects in large measure [23] what you said 4 years ago, on April 20, 1978, when you were also testifying in the Senate, and you stated that, "The FBI urgently needs a clear and workable statement of its responsibilities, power, and duties. The present statutory sources that establish our jurisdiction are not sufficiently definitive. History tells us that reliance on inherent authority has been a major contribution to some of the sad events that have been fully chronicled." And in your call for more legislation today, I think that reflects your feeling that you expressed then, and which I assume has been reconfirmed by your experience.

I think also, after having sat through most of this testimony, that we need some legislation, and it seems to me that if the Justice Department is now thinking in these terms also, that this might be a good opportunity to reason together and to see if you would agree that there seem to be four basic provisions that ought to be included in any draft. First, the provision, the specific provision, to authorize undercover operations by the Federal Bureau of

Investigation and the use of techniques that may not be specifically authorized by existing law—and by that, I am not talking about the dirty tricks. I am talking about things like leasing property or making payments or depositing funds.

Second, one of the basic standards for initiating an operation or for making a change in direction or a change in [24] focus, which is one of the sore points we have observed in these various operations, currently appears in the Attorney General's Guidelines on Criminal Investigations, and that is that there must be facts or circumstances that reasonably indicate that a Federal criminal violation of the type to be investigated has occurred, is occurring, or is likely to occur. In other words, a reasonable cause provision.

The third standard that suggests itself would be to address the stage in an operation at which a particular individual is given an opportunity to commit a crime and to set a standard for determining when that opportunity would be offered. And it would seem to me that this would be necessary as reflected by the concern of the members of this committee, Members of Congress, and many people in the public, with respect to this particular aspect of these operations. And I would refer you to paragraph (j)(3) of the Undercover Guidelines and to the evidence that we have had of reliance on the uncorroborated word of corrupt middlemen, a feature of the operations.

And finally, let me raise the question of whether or not the statutes should specify that these standards should be applied by accountable ranking officials of the Federal Bureau of Investigation and the Department of Justice, to make sure that the people who make the decisions are people who are both authorized and competent to make the decisions.

[25] Naturally, I would agree with you that you cannot enact laundry lists into law and that the legislation should set forth the fundamental principles and the specific operating details would have to be spelled out in guidelines which would be developed by the Bureau under the oversight of the Congress.

I am wondering if you could share your views about legislation along these general lines.

Mr. WEBSTER. Mr. Chairman, I have consistently supported the charter concept for the FBI, although that term may be out-of-fashion today, but——

Senator MATHIAS. It is not out of fashion with me.

Mr. WEBSTER [continuing]. As an affirmative statement of the mission of the FBI, not an attempt to make it less effective or restrict it out of a sense of past history that we have come through. As you know, such a charter was introduced under bipartisan sponsorship at the highest level. It just took a back burner in the upcoming agenda of a new administration.

I have said informally that the FBI is living by that charter; I believe that it is, and almost all our internal regulations follow the draft charter as if it were in place. At the same time that I was advocating that type of charter, I was also saying, and I say today, that I do not believe that you should attempt to legislate detail. The guideline principles is a very worthy one. It is one which lays down on the FBI [26] through the Attorney General appropriate guidelines that we are bound to follow. Through the oversight process, the oversight committees have an opportunity to express themselves on such guidelines. Guidelines permit change without the laborious process of legislative amendment. The guidelines that we have in place are largely unamended, since the first ones were put in place in 1976. Additional guidelines have been added in informants, undercover work, criminal investigation guidelines, and they have stood the test of time, although some of them, I think, are ripe for review.

So a guideline is not something here today and gone tomorrow. It also has a measure of permanency and legitimacy. It is there that I think the best approach to the problems that you have with sensitive issues ought to be addressed, and we are trying to be responsive to you in areas of that kind. I would welcome, as I said, specific legislation that would have permitted the kind of authorizations to do logical things that for technical reasons are not permitted under Federal law, simply because of the blanket legislation, like maintaining a separate bank account, rather than opening an account in the name of the U.S. Treasury. We require that legislation. It was incorporated in the original draft charter, and we would be glad to have it in legislative form any way that it might come.

I agree with the second point, that it is important to [27] note that investigations do change their focus, and Abscam is certainly exhibit A in respect to an investigation that, in tracking criminals, took us to a wide variety of crime and a wide variety of criminal actors. I am not certain—we have not really discussed it—and I am not certain exactly why a statute is required in this area, but certainly, I think that accountable people in the FBI and the Department of Justice should know and approve any major change or significant change in direction of an undercover operation. I have told our people that it does not satisfy me—and we are not doing it—to just line up a laundry list of things that a proposal might lead to. We want to know what we are really looking for, and if it changes that direction, then we want the Undercover Review Committee and the officials responsible for approving their recommendation, including myself when appropriate, to know about those changes. So I certainly agree with that, although it is not clear to me that legislation is needed.

Senator MATHIAS. Without debating that point with you, I think counsel will have some questions that may illuminate that issue.

Mr. WEBSTER. All right, that is fine.

As to the stage when a person should be given an opportunity to commit a crime, I am not sure whether you are talking about a stage in the process or a standard for conducting [28] investigations, and I think perhaps I ought to wait for the questions to come in before we can particularize that.

There will be many situations in which we have complete opportunity and control to deal with setting out requirements, both internal or in compliance with guidelines. There will be other situations. A narcotics situation is a fast-breaking thing on the streets, and I am sure none of us would want to keep a narcotics undercover agent from moving on the situation before it evaporated. There are fundamental guidelines of fairness reflected in due process.

There are fundamental guidelines of intrusion, protected by the fourth amendment, and we certainly want to stay within those.

With respect to the level of accountability, I am sure that can be developed in discussion. I subscribe to it fully up to a point. I do not think that I should personally run—and a I know that you do not think I should, either—each of the investigations or the 100-odd special agents in undercover work, or the 40 or 50 group I investigations that are going on at the present time. I do believe that I should be generally aware of what is happening, that I should be aware of the kind of investigative undercover work that is going on, and that sensitive issues should reach me promptly. I believe that that is happening. I believe that there has been a concerted effort within the Bureau to be sure that the [29] Assistant Director for the Criminal Division is made aware of sensitive problems. They have changed, but they have been consistently scrupulous about keeping me informed and consulting with me on those issues. I, in turn, have made it my business to talk to the Assistant Attorney General for Criminal Division and indeed, the Deputy Attorney General, and on occasion, the Attorney General, on matters of extreme sensitivity.

The risk that we have in management terms of requiring too much in a statutory way is that I will be doing or others will be doing what could well be done by skilled and experienced subordinates in a way that does not achieve the level of intense scrutiny that they would have the time to give to it. I already approve all court-authorized wiretaps. I already approve all court-authorized Foreign Intelligence Surveillance Act requests and a number of other things that are required by statute. I think it is important that I be accountable and accept responsibility—which I do—for the work of this Bureau in sensitive investigations, and there is no doubt within the Bureau that I expect to be informed on matters of this kind. It is a question of balance and a question of place. I would rather see that placed in guidelines than mandated by legislation. The mandate of legislation is contained in the proposed charter for the FBI that I consider on the back burner, and by no means dead, and I subscribe to that bill [30] as it was presented. It simply does not carry a very high agenda factor on Congress' agenda and potentially, within the department's very busy agenda, on matters that have to go before the Congress. But I can tell you, as I said earlier in my answer, that I proceeded as if it were our law, and we follow it.

Senator MATHIAS. I am going to defer further questions until a later stage.

Senator Huddleston?

Senator HUDDLESTON. Thank you, Mr. Chairman.

Judge Webster, it seems to me in all of our investigation and consideration to this point, that the major thing that the question particularly of Abscam, and perhaps of other undercover operations, boils down to is to what extent should an innocent citizen of the United States, a person who has never committed a crime, not engaged in criminal activity at a particular time, and perhaps even has no inclination to ever commit a crime, to what extent should the Federal Government present that individual with an opportuntiy to commit a crime which would to a great extent enrich him.

Maybe we ought to have some kind of testing system of everybody, you know; maybe that is an issue. I do not think so, and apparently, you do not either. But in most of the operations we have looked at, they have dealt with ongoing criminal activity, where there is no question that crimes were being committed. Abscam itself [31] started in that way. There were stolen securities, and it is a big operation in this country, stolen art. So we went into an operation to deal with the "problem criminal area."

During the course of that investigation, it went into another direction. And while the record would indicate that of those that were charged, the conviction rate has been pretty high, and those given an opportunity, the percentage has been pretty high. There were several other targets, however, that had the operation continued, would have been also given an opportunity to commit a crime and, of course, we do now know what the record would have been in those cases. There is no evidence that any of them as far as I know, were engaged in criminal activity or were likely to. But as I say, we do not know what is going to happen with any citizen when he is presented with the opportunity.

So the way that an operation changes direction seems to me to be very critical. I think we have demonstrated that a lot more concern, a lot more consideration, is given to the starting of an operation than is given to where that operation might lead once it is started. In the case of Abscam, we really have not been able to pin down exactly where it did take this turn. Agent Amoroso says he just pitched out the idea on a cruise with some corrupt middlemen. He had, he says, in his own mind was not thinking at the time that it was leading toward Congress; it just happened, And there have [32] been other assertions that it began in some other way. But at any rate, it seems to me—and I wonder if you agree—that if there is going to be a major change of direction of an undercover operation, that that change ought to be given the same kind of consideration, ought to have the same standards apply, as the initial operation had.

Mr. WEBSTER. Absolutely, Senator.

Senator HUDDLESTON. We moved into an area of immigration law, and the history, the 200-year history of the Congress, is that there has been one case in which fraud was charged in the case of an immigration matter in the Congress, in 200 years. That would not normally indicate a crime problem area, would it?

Mr. WEBSTER. That is correct.

Senator HUDDLESTON. But we know that happened. I think that there is an area that needs to be thought about a great deal.

Mr. WEBSTER. I think at that point--I probably should stop while I am in full agreement with you—but I think there was, at least, as we were monitoring the process at this point in time, some surprise on our part at how readily these corrupt influence peddlers had instant access to public offica1s, who very quickly got onboard with the idea.

Senator HUDDLESTON. But you do not really know, and there is nothing in your guidelines that tells you precisely what [33] representation the corrupt middleman made to the officials.

Mr. WEBSTER. No, I suppose that is true. We know what representations the officials made to——

Senator **Huddleston**. You know what you told them, and you know what they were supposed to do, but you do not know.

Mr. **Webster**. No. We do not know what they did. We do know what the public officials told us when they came in to visit, not realizing whom they were dealing with.

Senator **Huddleston**. And the only fail-safe, or the major fail-safe provision, was that once they were into the room before the cameras, with the secret cameras already rolling, and microphones, at that point, if your agent on the scene, or the attorneys who were watching from another location, if they determined then that this person was in fact there unwittingly, was there not expecting to commit some offense that he knew would be wrong, then you could stop the operation or you could abort the operation, and you did that in one case. But that still leaves the possibility that any innocent citizen in the United States, on no other representation than a corrupt middleman, can be brought into that position. He can be brought before secret cameras and at least be explored as to whether no not he is interested in committing a crime.

Mr. **Webster**. Well, I would hope that there would be far more of a basis for letting them come than to just open that door and say, "You all come." And I am really not in [34] disagreement with you. I am trying to preserve an essential investigative awareness of criminal association. We know that we are dealing with crooks. We have already established that these are crooks. They are representing that they have associations with people in public office, and in varying degrees of information, some less than I would now like to have had, some completely adequate, they describe their relationship with the public official. The tough question, I suppose, is that in the particular situation you are describing, they may not have talked about, "We did this or that," in the immigration field. What we have is an allegation that an official is willing to take money on account of his office. So, we have to decide and you have to decide, if you are going to legislate, whether you are going to bar us from utilizing a particular method of deception, which we thought was a real-world approach, in order to find out about those allegations that a particular Congressman is corrupt or corruptible.

Now, I do not believe in tests; I do not think there were any tests here. We had some unusual situations which——

Senator **Huddleston**. But it might be significant, Judge Webster, that the immigration scenario was created by the agency; in other words, a corrupt politician did not suggest to the middleman, or did not suggest to you that, "Look, here is a place I can be helpful. I can do this." But it was presented in the other way to him.

[35] Mr. **Webster**. I wish that we had a better record on that, and I think in the future, we will have a better record on how that developed. There is some indication and some of the agents recall that Somoza of Nicaragua was in the United States and was being expelled from the United States, and they were talking about that at one of those yacht meetings with a bunch of hoodlums and some public officials, and somehow or other, discussion came up about what might happen to the sheik——

Senator **Huddleston**. I would feel a lot more comfortable if these things originated with some law enforcement agencies talking about some crime problems, rather than originating from a bunch of convicts out on a boat, thinking, "Well, here is a way we can get somebody and maybe make a little money for ourselves while we are at it."

Mr. WEBSTER. Yes. Well, as I say, I would like a better record on that type of thing. I think in the ordinary case, we do have it, and certainly, steps have already been taken to be sure that we will have it in the future.

Senator HUDDLESTON. Judge Webster, what kind of instructions or training do you give your agents on dealing with the press?

Mr. WEBSTER. We maintain in each office a media representative, selected by the special agent in charge, whom we train at our academy at [36] Quantico, Va., on their requirements—what can be said, what cannot be said. As a matter of fact, we just finished an inservice retraining session a few weeks ago, and we bring leading journalists and others in to help the journalists understand our problems and have our people understand their problems.

Senator HUDDLESTON. Do you give many instructions on how to handle selective leaks?

Mr. WEBSTER. Yes. They do not selectively leak. They are not permitted to selectively leak. I cannot tell you that leaks do not occur, and I am sure that up here, no one would be surprised at that statement. Leaks occur throughout this Government. We discourage it. We discipline agents when we find they are responsible for it. And it is not viewed as the appropriate thing to do as a matter of peer pressure. We do everything we can to prevent it, and take appropriate action when it occurs.

Senator HUDDLESTON. How do you account for the fact that reporters often precede the subpena servers, and the public knows even before a subject of investigation sometimes knows that he is being investigated?

Mr. WEBSTER. I cannot give you a generalized answer to that. They may have had a tip. They may also have been the one who developed the story. In the recent investigation involving the pages, most of that information had been [37] developed by the press well in advance of it coming to the Department of Justice and the Department's requesting us to conduct that investigation. So they were following us as we found our way to places they had already been.

I do not countenance it. I do not approve of it. But at the same time, it is a real world situation, and the best we can do, as I have said, is conduct investigations of leaks, and when we find them, take appropriate administrative action.

Senator HUDDLESTON. Do you consider it a problem that grand jury considerations are frequently laid out in the press, that things that are supposed to be secret, that if innocent individuals often are painted with——

Mr. WEBSTER. My experience from a variety of positions in the criminal justice system convinces me that it is less likely to be a special agent of the FBI than a number of other places where those leaks can come from, including the witnesses themselves. The witness is under no injunction of secrecy, and often because his attorney thinks it is wise or because he thinks it is wise, he will put his story out in any way that he wants to, and that is where leaks occur. I am convinced that that is where a lot of the tapes got loose in the Abscam case.

Senator HUDDLESTON. Thank you, Mr. Chairman. My time has expired.

Senator MATHIAS. Thank you, Senator Huddleston.

[38] Senator SIMPSON. Thank you, Mr. Chairman.

Judge Webster, I think you may remember in my early days here in this place, I became intrigued a bit with the FBI charter, and at that time, that was rather a priority item in some circles, and a very sweeping kind of thing to be doing with the former Levi guidelines and guidelines of Attorney General Bell and Attorney General Civiletti. And I remember so well my efforts there in trying to come up with something that would not bind you down and yet would free you up in many ways, at least in the eyes of the public.

If the Congress were to again consider an FBI charter, would it not be desirable to include some guidance, clear guidance, there regarding undercover activities in that document—more than ever were thought to be addressed there previously? What are your thoughts there, and if so, what sort of guidance in that area?

Mr. WEBSTER. Senator Simpson, I believe that the present draft charter takes the correct approach, which is to deal with the things that cannot be done administratively, such as authorization for leases, deposits, offsetting income against expenses, and so on, and to require the Attorney General to promulgate guidelines which will be responsive to the sensitive considerations that you have discussed. I simply do not believe that it is wise to address an evolving technique with the concrete legislation involved.

[39] Now, the guidelines today, the difference between today and maybe 10 or 15 years ago is that we have six oversight committees, any one of which can make it its business to be interested in those guidelines and the adequacy of them and bring enough light or heat, depending on your view of it, to bear on the Department and on the Bureau, to be sure that those are adequate.

Senator SIMPSON. If we are to rely on guidelines and a closer supervision of undercover operations—and I think that certainly seems to be the effort, at least, at present, a perilous question—but how might you envision that Congress might exercise any responsible oversight over the commencement of such operations and particularly over any shift of focus to other targets in an investigation different from the original inception as to the investigation; and is such oversight in that kind of a situation necessary, proper, helpful, responsive? I would like your general thought.

Mr. WEBSTER. Well, I think, for example, that we are going to pay very close attention to the conclusions that you reach in this committee, whether or not they include recommendations for legislation, and that the guidelines should be reviewed to consider whether or not they adequately address the concerns. Then I would propose—because I presume your committee will be going out of business—that we would be then accountable to, say, the Judiciary Committees of both the House and the Senate [40] on any matters that they want to take up in formal hearing or by whatever other means they want to exercise their oversight.

Senator Simpson. I guess it comes right down to where we were with the FBI charter. Where is that line between guidelines, the flexibility of guidelines within the Bureau, and codification of those guidelines into statute, and I guess we will grapple with that one for a good long while.

Well, one final question for me Judge. You have stated again the importance of congressional oversight regarding guidelines, and in your early testimony back in 1978, as the threat of consistency is indeed so with you—I think that is part of your ability and reputation in this place—and in those hearings, that testimony, you stated at that time, "Of course, changes in the guidelines would be made openly. Congress, in the exercise of its oversight function, would review our implementation of those guidelines and, if unsatisfied, could resort to its authorization or appropriation authority, or even to specific legislation that would preempt those guidelines, and settle any unresolved issues." That was a statement of yours. And then you went on to say, "I believe an accommodation could be reached, however, in almost all cases that would resolve any conflict."

So in this situation, would you agree that the FBI and the Department of Justice's formal interpretations and modifications of guidelines should be sent to the Congress in [41] advance or promptly after adoption of guidelines? I think our record here in this examination and investigation discloses that that has not always been done. For example, the guideline definition of "public official" has been formally interpreted to exclude a State legislator or a mayor, or many lesser lights, I guess, in public officialdom, but Congress was not advised or informed of that until we determined that.

Your thoughts?

Mr. Webster. I think you should be informed. As far as I know, that is the only occasion when an interpretation of that kind failed to reach the Congress. In fact, I think it is the only time in which we have had occasion to try to understand what the Attorney General's guidelines meant. They were promulgated, as I recall, in February of 1981. The new administration, the new Attorney General came in, and we had to look at some of that broad language more restrictively, and we advised the Department and the Attorney General what our interpretations were. We did not have a response to that interpretation, and presumptively, it was acceptable. But I think we both failed in our responsibility to go forward. We were waiting for a concurrence which did not come, and there had been no rejection of it. But I think it would have been well for the oversight committees to have been advised of this particular one, because it does restrict the number of public corruption cases that go up to the highest level of review. And [42] I do not think we will make that error again. It was an error of oversight—not that kind of oversight, but it was a sin of omission which I regret, and it was a question of assuming that maybe that would go up through the Department, since it was the Attorney General's guidelines that were being interpreted. But we have a responsiblity to remind the new administration that we should be telling Congress of the effect of that, and I can assure you that it will not happen again.

Senator Simpson. Well, I thank you. That is a very candid response, and I think we refer to that in the trade here and there as "a learning experience," and certainly, this whole thing has been that for us on the select committee, and especially from what transpired in floor debate on the Williams dismissal and trying to get back to fact, and it has been a learning experience, obviously for your Department and for the Senate.

Thank you very much, Mr. Chairman.

Senator Mathias. Thank you, Senator Simpson.

Senator Leahy?

Senator Leahy. Thank you.

I would like to follow up a little bit on one of the chairman's comments earlier. Is my understanding correct that you are in favor of an FBI charter?

Senator Leahy. That has always been my position. I [43] suppose the sense of urgency that I felt 4 years ago is less urgent now, because I think we have demonstrated in that period of time a high level of trustworthiness and some of the slings and arrows that were suggesting a different kind of charter seem to have evaporated. I still believe in the charter that was introduced. As I said to the chairman, I consider it internally as if it were in place and we follow its provisions and the principles that are set forth in that charter.

Senator Leahy. Let me ask you, then, a followup question on that——

Senator Mathias. If I could interrupt you just enough to make an observation, I think it is not unusual that the length of residence in Washington is in inverse proportion to your sense of urgency.

Senator Leahy. I have noted that, Mr. Chairman, and I find that I go back to Vermont virtually every week to kind of reinstill that sense of urgency——

Senator Mathias. Well, that may be overdoing it.

Senator Leahy. I know the chairman goes back to his own State virtually every night.

Senator Mathias. I keep my sense of urgency high. [Laughter.]

Senator Leahy. I would state, however, that this weekend, the sense of urgency will be somewhat tempered by the view of [44] the lovely change of color in Vermont's foliage—something shared by some of the other New England States, I should quickly add, as I see Senator Rudman about to interrupt—but with that one little commercial for the travel industry of Vermont, let us go back to a more serious thing.

Mr. Director, you mentioned the FBI charter, and even with an FBI charter, to the extent that that is really effective is if there is oversight at two levels—yours and the Justice Department's, of course, and up here at the Congress. We seem to run a very fragmented method of doing business up here. Every one of us sits on far more committees than we can possibly handle. We have let that grow like Topsy. I know I served on at least three different committees, as well as a number of subcommittees, that you have come before—in the Intelligence Committee, here, and on the Judiciary Committee.

Is congressional oversight really adequate, or is it a case where people like yourself come up, read a good, thoughtful statement into the record, and then come back 2 days later and give the same statement to another group of people with no followup, no cross-correlation? I mean, when we talk about all of these things eventually coming under the oversight of elected representatives of the people, isn't that oversight really, in many ways, a farce?

Mr. **Webster**. I would hope not, if we could agree on what I think oversight means. And in my case, oversight by me is a [45] little more than that, because in many cases, I am making management decisions before something happens, and we are going forward, and it is operational oversight. Some of it is more generalized information, because obviously, I cannot absorb 800 tapes and that sort of thing in one investigation.

In congressional oversight, as I understand it, you are stepping back and looking at the rules under which we operate and examining in various ways, according to your choosing, what has already happened, to see whether we are living by what you have already agreed is an appropriate way to live. That involves our being responsive to whatever you want to know about, that we can reasonably respond to you about. And of course, it will be generated from time to time by specific problem areas or allegations made, rightly or wrongly, against the Bureau or the Department by private citizens or interested groups.

And I do not think you should—if I may say so—I do not think you should view the oversight role as one of management. That is the executive branch's responsibility. You want to know that we are being candid with you about what we do and the way in which we do it, and that so far as you can tell, we are doing our business properly—we are not engaging in fraud or corruption or waste or inefficiency—and that we are paying attention to your concerns about constitutional areas of sensitivity.

[46] Senator **Leahy**. Well, let me talk a little bit about the management level of it from your end. If you have any undercover operation—and I think we are all well aware enough on this committee—if we were not before we came here, certainly, after having heard the testimony of everybody, listening to the questions asked by our two counsel, we are now well aware of the fact that when you go into an undercover operation, you do not send at every, single level, well-trained agents, following a strict discipline, but by the very nature of it, you are going to be using middlemen who may well have a checkered past, may be motivated by greed, or whatever. What responsibility of oversight is there on your part in watching these corrupt middlemen, who may well have as their primary motive, often do have as their primary motive, the feathering of their own nests; they are certainly not doing it to maintain the integrity of our criminal code, and in feathering their own nests, they are perfectly willing to let themselves go to any length of entrapment or anything else if they see a profit solely to themselves. What is your responsibility with those corrupt middlemen?

Mr. **Webster**. Well, I think you are talking about my personal responsibility——

Senator **Leahy**. Yours and the Department's.

Mr. **Webster**. Well, I think we have a responsibility first of all to develop a set of principles, or policy, if you want [47] to call it that, under which we will attempt to address the utilization of information derived from these people. We recognize that there are going to be limitations in what we can do. They are not our people. They do not even know they are dealing with us. They are under investigation. They are going to be out there, doing it. In fact, in terms of the influence peddlers, one of the things that always struck me as being one of the neglected sides of the whole review of Abscam is the fact that these people are the real problems, and they are there, and this was a serious attempt to deal a few of them out, and we did take a few of them out, and that maybe we should all be wondering what are we going to do about producing the list of these people who make it their business to try to do things by shortcuts and utilize, sometimes deceitfully, sometimes in collaboration, the clout of public officials.

I think we have a responsibility to try to minimize the risk that they will go off on frolics of their own, and that is a function of the Undercover Review Committee at the beginning, to try to develop ways of managing people who are not under our control, and to identify when they are not behaving properly, when they are doing things that they should not do.

I am going at length, because I am trying to get to your question, trying to answer it.

Senator **Leahy**. Maybe—and my time is up—but if I could make the question just a little bit more specific on one [48] followup point. Is there any failsafe way of handling a corrupt middleman? Is there any totally failsafe way to assure that we do not get somebody into an entrapment situation, that by all our standards is unfair?

Mr. **Webster**. Senator Leahy, there is no known fail-safe way that we have found to keep that type of intermediary from presenting someone to us. We do have methods of making sure that we do not engage in entrapment and, in fact, do not even tender bribes to those who have not demonstrated their readiness and willingness to receive them. And even those are perhaps not failsafe, but I have found no indication here, and certainly, the courts have not found any indication, where we took somebody who was brought to us by an intermediary and then entrapped them. That did not happen.

We cannot be sure, from a 100- to 1,000-percent approach that every person brought to us is not a credited criminal. We can try, but we cannot ever be sure that someone will not walk into a scenario that does not belong there. We can try to protect them once they are there.

Senator **Leahy**. Thank you.

Senator **Mathias**. Thank you.

Senator Rudman?

Senator **Rudman**. Thank you very much, Mr. Chairman.

Judge Webster, let me first say that I think you can be very proud of the people who came up here from the Bureau and [49] testified. They were first-rate, they were candid; they disagreed with us rather vociferously when they did not agree with our line of questioning, and I believe that we did get excellent cooperation, and obviously, people in the Bureau were sensitive to the problems. There have been some problems, but I think that there testimony here was on the highest standards, and I just want to say that to you.

I also want to suggest to you that whoever does your research might have served you very well to have given you this particular quotation to lead off your testimony today. President Kennedy, then Senator Kennedy, said this, and I think it is just kind of interesting. He said, "My experience in Government is that when things are noncontroversial and beautifully coordinated, there is not much going on." I think that is worth thinking about in respect of this entire investigation.

I think there was one overriding problem that came out of this from my perspective. I think Senator Leahy has certainly touched on it. I want to go into it just in a bit more detail. You reflected in your statement on page 15, when you say:

> In dealing with cooperating witnesses and in utilizing unwitting corrupt intermediaries, the greatest possible care must be exercised to prevent a perversion of the operation by their activities.

One of the things that concerned me about this—and I do [50] not support at this time and probably will not in the future—a suggestion that there ought to be a warrant procedure, as we do in other things, and I am not ready to suggest statutes that will set forth these things. My own experience in running undercover operations over an 8-year period was it will not work. But it seems to me that there have got to be some safeguards that are better than what are now in place to prevent the following situation from occurring, and I just want to get your reaction, and I will try to make it brief.

As you know, we had some closed hearings in which we had the so-called corrupt middlemen testify. And of course, some of their testimony could be discounted as being perjury. I do not necessarily believe the entire line of testimony of any of those people that testified before us. But some of it was corroborated, and one of the witnesses indicated—and he was a corrupt middleman—that one of the other corrupt middlemen—we are now twice-removed from the Bureau, but now going back to Mr. Weinberg, who now is working with the Bureau—that there is a suggestion to do with the asylum scenario that finally comes out with the corrupt middleman, that he is almost running a booking agency. He is on the telephone, calling all over the country, asking, "Do you know a Congressman?" He is calling Arizona, he is calling Florida, he is calling Illinois, he is calling all over the place. "Well, if you know one, could I get to meet him?" because, you see, from his point of [51] view, if he can produce a Congressman, he gets $5,000 to put in his pocket. And what happens in some of these cases, and what could have happened even more than did here, had it not been for some foul-ups in communications of the corrupt middlemen, is people could have been brought in from around the country to meetings here in Washington and exposed to the possibility of a bribe being offered.

Now, I understand that the final safeguard that you have in your guidelines is that once the person is brought in, and it appears that he does not know what is going on—that is, the Pressler case—then the agents are supposed to throttle down and get that out as soon as it can be concluded. I submit to you, Judge Webster, that that is not good enough, that the risks involved to purely innocent people, people who have no connection whatsoever with any wrongdoing, but who have been brought in because corrupt middlemen have a financial incentive to bring them in, that that somehow got out of control.

I wonder if you agree with me about that and how you would suggest in your guidelines or through a review committee to control it?

Mr. WEBSTER. I understand the problem and I am sympathetic to it. I perhaps would put it in different terms. Senator, my understanding—and I think the record supports this—is that we made payments to only one corrupt influence peddler, and these payments were made at the very end when we were hoping that [52] that individual would stay in line and that when we had our interviews on the day we brought the case down in February of 1980, that is, brought the covert phase of it down, that he would become a cooperating witness, and that almost happened. So we made these payments to him, because he was complaining and unhappy. The only way these people were going to get paid was from the public official himself, who had to make that money available out of what he was paid. So it was not a commission for just bringing them there. They were looking under our scenario for someone who was corrupt enough to kick back to them if they came. It was a kind of precaution. It was not a total one.

All of us who watch and try to bring policy and balance and judgment into the operation at the highest level watch for that moment in time when the real contacts would fade and the scam activity would begin to develop. And I expressed myself a number of times when our leads—and we were following leads—when our leads reached the bottom of the barrel, then we are at risk that some of these people will begin to bring in people who do not belong here.

And I do not offer any immediate answer to the problem. If I can interject another thought that occurs to me, it is difficult in a public hearing to express a few personal opinions about what went on in those scenarios—I think we make a mistake if we take the [53] legal view and say that those who took the money were guilty, and those who did not take the money were innocent. I would rather say that in some of the cases, it is like the Irish formulation: "not proved." We knew we did not have a case, and I am sure you saw and heard from some of the things that those were not situations that we should be investigating. There were very few—very few—that I feel we were totally taken on.

Senator RUDMAN. I think I would respond, Judge Webster, by saying that what you say is correct, but in spite of the fact that only one payment was made, there was an incentive out there for some of these corrupt middlemen, with no corroboration whatsoever, to go out and run tests, if you will. And I would agree with you, the way the testimony came out, you did no targeting; almost the entire Congress was the target, not of the FBI but of these corrupt middlemen, who decided this was maybe a way to make a fast buck.

The last question——

Mr. **Webster**. Now, before you leave that question——

Senator **Rudman**. Go right ahead.

Mr. **Webster**. I am really not in disagreement with you. I think—and have in mind that the Undercover Review Committee came in in mid-1978—this thing was beginning to fly less than 1 year later, and these things were happening very fast. I think our experience tells us that we should find ways to [54] develop more information by the individual intermediaries, that we should find a scenario that permits us to require more information of them. We cannot line them up and give them a bill of particulars. They think they are dealing with other crooks. We have to advance it, as you know, from that practical way. But I think we can and will be very watchful for this, and I think in the documentation that comes upstairs on the bribe offers, that we are now seeing more complete information given to us about the basis for these activities. And I think that will be reflected at the field level by being watchful that we are not just stimulating people who are not well connected. We had one in that category. We had some who were extraordinarily well connected and moved with extraordinary speed; it was like deja-vu. That may have confused us in relying too much on one that turned out to be a mixed bag. They were all interrelated and associated and knew each other, and we were going through that learning process. I do not think there is any magic formula except an intense awareness of the potential that you are talking about.

Senator **Rudman**. I believe that one of the suggestions that has been made that the committee will consider is a recommendation that possibly, the Undercover Review Committee might be broadened a bit in scope in terms to bring in some other sensitivities that might not currently exist. That might be comething that our report might have. We have not discussed it.

[55] Thank you, Mr. Chairman.

Judge Webster, let me just simply say to you that it seems to me that you have an opportunity to take what was a successful operation, to correct the problems that we all agree existed, without inhibiting what the mission of the Bureau is, and you have a particular chance of doing it, sir, because of your personal reputation, and I hope that it will be something that you will seriously undertake so that we could correct these things.

Mr. **Webster**. Thank you.

Senator **Mathias**. Mr. Neal?

Mr. **Neal**. Well, Mr. Director, I have mixed emotions. As I sit here, as an old prosecutor, you like to find a "smoking gun." We have not found a "smoking gun" in Abscam. I have mixed emotions about asking you questions because every time I go out on the streets or go back to Nashville, some lady comes up to me and says, "What are you doing to that nice Mr. Webster?"

But I think, and without indicating my own inclinations here, that some questions should be answered. For example, why can't you have a guideline that simply says, "No opportunity to commit an offense"—now, this is the creation of an opportunity to commit an offense—"no opportunity to commit an offense, and no electronic surveillance shall be utilized [56] against any individual except upon reasonable indication that that individual has committed, is committing, or will commit an offense of the nature contemplated. The grounds for the reasonable indication, which shall be set forth in writing, may include the reliability of the person providing the information or the detailed nature of that information."

Now, what would be wrong with a guideline like that? It would focus your attention. It might eliminate what really concerns me about the Abscam affair, for example, as has been mentioned, and that is that if anybody, however corrupt, suggested the name of a Congressman, the FBI authorized the offer of a bribe to that Congressman if he appeared before the camera. And I must say, near the end of Abscam, some people were willy-nilly going around, trying to bring Congressmen in. And I think there was not enough focus on why do we do this.

Now, the answer we have gotten up here is that, well, if we did not authorize to everyone, then we would be selectively picking targets, and that might be a political situation. But if you had a guideline like this, and you had to meet a new item, and you had to set forth, like you do for a search warrant—although maybe not with probable cause, but reasonable indication—it would certainly focus your attention, Mr. Director, and had your attention been focused this way, I doubt you would have approved in 30 minutes Senator Pressler's being brought in.

[57] Mr. **Webster**. Well, you open up a couple of other areas, and I suppose you are going to go into those anyway, but I would like to try to say that I do not think it is an answer for us to say we must take everybody else we will be accused of being selective. And some people may have come pretty close to saying that. I do not think I have said that. I think that——

Mr. **Neal**. It has been said, Mr. Director, in these hearings.

Mr. **Webster**. Those who have come through the process and walked out the door have at least the benefit of having demonstrated that we were wrong or that the middlemen were wrong in recommending them to us.

I would not like to be bound by the exact words that you are saying, because I have not had a chance to think about them. There is some merit in it. I am not sure whether you should hold us to an exact scenario so that we cannot interpose a scenario that goes in one direction unless we have reasonable grounds to believe that that person has already done that particular thing; I would like to think about that. We have come pretty close to it in the investigative guidelines that are already there, if we are talking about a reasonable suspicion basis. I have no problem with requiring an articulation of the reasons. I think we are doing that now, and we will certainly do it in the future.

[58] So there may be some merit in a guideline that makes it clear that we are expected to discriminate. I think in a way, we do discriminate. I do not want to buy into the idea, and do not think I ever have, that we are forced to take everything that is brought to us, when we have clear information that is coming from a source that we have no reason to believe is reliable.

Mr. **Neal**. Second, Mr. Director, even if your guidelines were amended the way that maybe this committee might think they should be amended, they would still be guidelines, and one of your paragraphs in those guidelines expressly states that these guidelines in effect do not create any rights on anybody's behalf, and as you know, there is a Supreme Court case saying that an accused who is being prosecuted as a result of violation of guidelines has really no right to complain in a criminal proceeding. In other words, there are no real sanctions except your own integrity or the integrity of the agency. Should there be sanctions for violation of the guidelines, some expressed sanctions—or maybe not for a technical violation but for a flagrant violation?

Mr. WEBSTER. We already have sanctions. They are not spelled out in the guidelines themselves, but a violation of our rules in place presents a basis for administrative action which our Inspection Division and the Summary Unit that deals with those things [59] and ultimately, I, would undertake to do.

Mr. NEAL. Finally, Mr. Director, it is a cost, and as we have seen here, a substantial cost for someone like Senator Pressler, and if we were not in a public session, we could possibly mention some other names, to have been brought before a camera. Considering that cost, what would be—what damage would it do if there was a law that simply says, if you are going to offer an opportunity to a person to commit an offense, you have to go before a magistrate and establish some reasonable basis for doing that.

Again, one could argue about the standard, whether it be probable cause, which might be too high, but some reasonable basis for doing that, and at least have some independent body review that. I do not know that I would necessarily take that position, but I think you should respond to the committee on that.

Mr. WEBSTER. Mr. Neal, I would oppose that proposition for a number of reasons. I do not believe that the courts should be that immediately involved in a less-than-probable cause situation. There is enough movement to bring the courts into the prosecutive side, and I think, inevitably, that distorts their role as a reviewer. We have it in title III, we have it in searches, because the fourth amendment is implicated. The courts have looked at the Abscam cases and found no fourth amendment problems here, no invasion of [60] privacy in a constitutional sense. There are those who think it is intrusive to go before the camera, but it is certainly not a violation of constitutional rights. For many of us—and I think, as I reviewed some of the correspondence involving Senator Pressler, some of his own correspondence, and his interview following the public disclosure of the Abscam investigation, he had an interest in seeing that the record spoke for itself; that is, there was a complete record there. I think for many of us, if we are going to be for any reason exposed to something of this kind, I would be much more comfortable, knowing how I feel about myself, knowing they had a complete record than to have to argue about what took place in that meeting, according to my recollection versus some other person's recollection of what took place. And for that reason, it does not seem to me that any special need for a magistrate's interference or intervention is required on the decision whether or not to record what we could do without it.

So, on the side of recording, I see no special need for it; on the side of having the meeting at all, I think that unwisely would involve the Federal court system at a level less than probable cause, and for that reason, would be opposed to it.

Mr. **Neal**. Mr. Chairman, I am not going to ask anymore questions, remembering the admonition of the people who have [61] talked to me. We do have more work to do. I would not want the record to reflect that this is the end of our study. We will be asking further questions, specifically, perhaps by interrogatories or otherwise. But I am going to stop now, and I know that Mr. Wheeler has some questions.

Senator **Mathias**. Well, I agree with you, Mr. Neal, that we have work to do. In fact, the real work of the committee, I am afraid, lies ahead of us. Judge Webster's testimony this morning that the Department is considering legislation in this area opens up new opportunities for cooperation with the Department, and I hope that the next month or two is going to see a fruitful end to all of this activity.

Mr. Wheeler?

Mr. **Wheeler**. Thank you, Senator.

Mr. Director, Mr. Neal does not care if the nice old ladies come up to me and ask me why I treated you so badly, so it falls to me to ask you the Abscam questions.

Mr. **Webster**. All right.

Mr. **Wheeler**. Before I get to some very specific questions, Mr. Director, I think the record needs clarification on two aspects of the existing guidelines. First, paragraph (m) of the existing undercover guidelines requires a resubmission or reapplication to the Undercover Operations Review Committee if a new, sensitive circumstance arises that was not contained in the application for the opening of the undercover [62] operation. But I think it has been made clear in our record that that paragraph (m) may not cover the very kind of case that we have in Abscam; namely, suppose that the original turning to an investigation of public corruption with Mayor Errichetti and some of the other State officials had been submitted to the Undercover Operations Review Committee, and perhaps even to yourself, for approval, and it had been approved so that the sensitive circumstance of public officials had been considered and approved. Then we come to July 26, 1979, and the spinning out of the asylum scenario by Tony Amoroso and the at least concrete ties turn to investigation of Members of Congress. I think in most of our minds and the minds of the members of the committee, the turning from State officials to an investigation of Members of Congress is a serious change in the focus of the operation, but under the guidelines, it is just a change from one public official or group of public officials to another group of public officials. We are not aware of anything in the guidelines that would require a resubmission of that important question to the Undercover Review Committee or to you for consideration.

I guess my question to you is, Is your interpretation different and it would require a resubmission, and if not, do you agree with me that the guidelines ought to be amended to provide for a resubmission upon such a major turn in the operation?

[63] Mr. **Webster**. I do not have the guidelines before me. I would assume that if it is possible to interpret it to require it, I would so interpret it. If it is not possible, I think I would look with a great deal of support, I think, at any guideline that would indicate clearly that this should come to us.

I cannot think of a situation in which that would not be the case. The Undercover Committee was fairly new at that point in time. That investigation finally became a special or nationally controlled operation. But it seems to me as I look back that I was aware, in reasonably specific terms, that the investigation had turned up corrupt influence peddlers who were saying that they had Congressmen who were interested in assisting the shiek for money. And of course, as they came through, I followed them, and there was, if not an institutional process by which the Undercover Committee reviewed it, there was high level awareness of that shift—and should always be. I have made it clear that we are not going ot use a laundry list at the beginning and then say, "Well, we told you it was public corruption, and just because it has changed, we did not see any reason to tell you."

I think our field is very sensitive to my personal demand that we be keep aware of any change off the main beat.

Mr. **Wheeler**. One view that could be expressed, though, is [64] that certainly, one of the admirable features of the existing undercover guidelines is that the initial application for approval of an undercover operation requires very careful consideration by the Review Committee and by, ultimately, in many instances, yourself, of a substantial list of factors including, for example, suitability of the informant, the particular undercover operatives who are involved, and many other such factors.

I guess what I am suggesting to you is that mere awareness on your part or on the part of members of the Review Committee, that now, Members of Congress are being investigated may not be sufficient, that perhaps, when you make that kind of a major turn, there ought to be a formal, thorough reevaluation of, is a Mel Weinberg suitable for this type of investigation as we had initially determined he was suitable to investigate a mayor, of example.

Mr. **Webster**. It might very well be. The Undercover Committee was set up as an advisory committee to me, so that I could be sure of a careful thinking process, and it was institutionalized in the undercover guidelines. The guideline did not create it; it was already there. And we tried to shape that committee so that it is reflective of a number of people who are sensitive to a number of issues, and I mentioned some of those in my opening statement—particularly, the presence of the Department of [65] Justice representatives. When I invited them to sit, that was really a first in our relations with the Department. It has been very useful. Nothing goes forward if there is any lack of approval or a question mark on the part of any members of the Justice Department. So we do have that there.

I guess we are not really disagreeing. I am saying that I get most of what you would like us to have through the committee anyway, but it would not be a problem for me to see those major issues submitted to the Undercover Review Committee.

Mr. **Wheeler**. All right, The second question about the existing guidelines is, you referred in passing, a few moments ago, to the reasonable suspicion requirement that exists in the current guidelines for criminal investigations of organizations and individuals. I just want to make clear that it is our interpretation of the undercover guidelines and the guidelines for criminal investigations that an undercover operation can be commenced currently without meeting the standard that is required for opening a criminal investigation—namely, facts and circumstances that reasonably indicate that a Federal crime has been, is being, or will be committed. Namely, an undercover operation can be initiated under the current guidelines, under our reading, for a mere inquiry, and that would not require that standard. That is one of the circumstances, I must say, that gives us pause. Is your [66] interpretation the same—and I think that is one of the points that Mr. Neal was making, that that is a loophole that we think perhaps ought to be tightened.

Mr. Webster. I would like to explore that a little further and think it through a little more. I had not thought that we conducted undercover operations in the absence of a reasonable suspicion. Now, we may disagree as to what is a reasonable suspicion or where that suspicion comes from, but I do not believe that undercover operations are any different than any other kind of operation, unless they fall under, say, the domestic security or racketeering sections of our guidelines which have to do with overall intelligence gathering, and even there, there has to be a relationship that the organization itself was engaged in some form, or will engage in criminal activity.

Mr. Wheeler. Let me turn now to some specific Abscam questions, and let me preface them by saying, Mr. Director, that at least with this next group of questions, I think that we are all in agreement that, at least in the very sensitive cases, the ultimate decisionmaking should be made at a very high level. And we are aware that in Abscam, in almost all of the cases—certainly, all the ones following Mayor Errichetti—that they were made at a high level, and indeed, you personally were involved in those decisions.

The question that we have, though, is whether under your [67] existing procedures, the ultimate decisionmaker, and I am talking now in Abscam about you, were adequately informed about all the information that we think should have been considered by the ultimate decisionmaker, or whether the siphoning process that exists, and is just inherent, I suppose, in a bureaucracy, prevented you from being provided with a lot of the information of the type that Mr. Neal has suggested might perhaps be incorporated in the guidelines requiring a *Spinelli* or *Aguilar* type of inquiry.

Let me run through some of the information that in our view—and all we have, of course, is the documents that you have provided to us and our inquiries of a number of the FBI officials—but in our view, this information was not provided to you, and I would to ask you if perhaps it was orally provided, and if it was not, what institutionally you think might be done to prevent this in the future.

For example, I would like to focus first on the MacDonald incident, Mr. MacDonald, who of course is now deceased. But he was approved by you on March 27, 1979, for being invited to a meeting at which he would be offered a bribe if the other circumstances occurred——

Mr. Webster. I am glad you have expressed it that way, because I think that sometimes in these discussions, there are two things that I would want to take issue with, but they do not seem important enough, and so I do not do them. One is [68] "brought to a meeting." I am not aware that any of these people were carried in, dragged in; all of them walked in. They might have been invited to the meeting, but they were not brought there. The other one is that the authorization was always subject to conditions. The bribe was not to be offered unless—and some of these conditions were reinforced by U.S. attorneys' advice, and they were put in, unless for instance, they personally were present, they personally took the money, they personally made representations ahead of time.

So, when I approved an authorization, it was not, "Go, see if so-and-so will take a bribe." It was, "Yes; you may pay this amount of money as a bribe if that person has done these things first." And I am glad that you made that as a record so everyone understands what we are talking about.

Mr. **Wheeler**. All right. Now, the question is on what basis the invitation extended to Commissioner MacDonald—the approval—was based. Now, that ultimately turned on the word of Mayor Errichetti, of course, one of the middlemen, and in part, it might have turned—and I will come to this—on the meeting between Commissioner MacDonald and an FBI agent on March 5, 1979.

My question to you is this, Mr. Director. Did you have any of the following information on March 27, 1979, when you were asked to approve the invitation to MacDonald for the meeting? This is the information. On January 9, 1979, Mayor [69] Errichetti said in a recorded conversation that was an FBI recording, that three of the five casino control commissioners were his nominees. That was not correct, and it could have been verified by a checking of the record in the sense that none of these people was nominated by Mayor Errichetti. Mayor Errichetti said that one of the three who was in his control was a black man. There was no black man on the commission at the time. Mayor Errichetti said that one of the men who was in his control was a man named "Colozzi." There was no such man on the commission at the time. The mayor said that one of the men on the committee who was in his control was a man named "Roth." There was no such man on the commission at the time.

On February 12, 1979, in a recorded conversation with Errichetti, Weinberg, and FBI agent Amoroso, Amoroso told Errichetti that he must give agent McCloud—only not calling him agent, of course—strong assurances on MacDonald. Errichetti said, "MacDonald won't talk to McCloud."

On March 8, 1979, in a recorded conversation that the FBI had, Errichetti said to Amoroso and Weinberg, "You don't mention money to MacDonald. MacDonald isn't going to get a quarter. No way. I may buy him a cigar, a $3 cigar, that's it. But there ain't no way I'm going to offer him, give him, the money. MacDonald don't care about no $10,000."

On March 5, 1979, there was a recorded meeting with [70] Errichetti, agent McCarthy—being called McCloud—and MacDonald in which, even though it lasted for a substantial period of time, there was not a single inculpatory statement by Mr. MacDonald. In fact, Mr. MacDonald on several instances in that conversation stretched the importance of playing by the rules, satisfying the legal requirements, and having good property.

Now, we would view, Mr. Director, all of that information as making Mr. Errichetti's representation that he controlled MacDonald and that MacDonald would take a bribe—well, in fact, he denied that MacDonald would take money—so we would view all that information as making it highly questionable whether, if Errichetti could somehow get MacDonald into the room, that MacDonald would be there, knowingly, for the purpose of being the recipient of a bribe offer. And going now to Mr. Neal's proposed guideline, or perhaps, statute, of requiring a reasonable suspicion for belief that the individual has committed, is committing, or will commit a Federal crime, I wonder if you had all of that information presented to you in any form, because the documents do not reflect that any of it was presented to you.

Mr. **Webster**. Well, I have a pretty good memory, but I do not trust it to go back for 3 years, and this was over 3 years ago.

I do recall that this was one of the very first of what I [71] considered important political cases. In fact, it is probably one of the first, if I am not mistaken, in which I really began to be involved in the decisionmaking process.

In looking over the March 27 memorandum, which I initialed following approval by a number of intermediary or subordinate executives, including the then Associate director, I can recall, based upon two of my notes, that I was aware that Mayor Errichetti had already taken a bribe—that was a prosecutable case—and I was aware that there was a resistance, as I think experience tells us there always is in public corruption cases, a political figure does not want to take money. That is where the term, "bagman" originated. Someone else will go and do that. There is a certain security in not being around when money is passing.

In looking at the record itself, the only thing that I find that helps me, which comes from my having called the strike force chief, Tom Puccio, about the proposal and discussing it with him, is that he said he had discussed it with the Assistant Attorney Geneal—but that is not the point. The point is that he said, according to my notes, that the mayor—that is, Errichetti—"has been advised assurances by the subject will be required before money is paid, and such assurances will be captured"—he is now telling me—"and we will capture such assurances on evidence," and he sees no entrapment problem.

[72] Thus, on the basis of my notes, I was at least orally informed that the mayor was saying that he will come, and he will make the asurances. I know nothing about the earlier incidents which occurred in this process.

Mr. **Wheeler**. You see, that is our problem. Tom Puccio was wrong. The fact is, if you read the tapes of the conversations between Errichetti and Weinberg and Errichetti and agent Amoroso, and the one tape on which MacDonald himself appears at some length, no such assurance was made. And again, MacDonald was very explicit in this conversation with agent McCarthy, being called Mr. McCloud, that you had to play by the rules, you have to do it this way. In fact, he talked about how when one of the other applicants for a casino license had been alleged to have been connected to the underworld, they investigated thoroughly and even threatened not to grant the license on that basis. And it is certainly our view that it would be a better practice—not something that should be required in a statute, necessarily—but it would be a better practice if the decisionmaker, whoever it may be—and that may not necessarily be you, and in some instances, it will not be—that you get in writing both the pros and the cons, what are the factors on which you really ought to base your decision. As the Justice Department with prosecution memos does at the very end, perhaps at this stage of the game, to make sure that the right decision is made, you ought to get in writing the [73] pros and the cons suggesting that the corrupt middleman knows what he is talking about. And I suspect, Mr. Director, if you had known that the public record showed that three of the five individuals Errichetti said he had control of did not even exist, they were not even on the Commission, that you might have been concerned about whether you ought to rely on his representation that this one individual would in fact come in.

Mr. **Webster**. There is no question that the more accurate, and I hope not bulky, but the more accurate, the information that can come forward to someone who has to make a decision, the more useful and helpful it will be. There is considerable effort now to reinforce that within the Bureau to be sure that we have it—which is not to say that I want the whole 9 yards sent up to us, because it will not be read. I would much rather have an earnest effort to give it to us.

I think that—and perhaps I am taking a liberty here—but one of the reputations that the FBI has in the courtroom is to tell it the way it is. There is no real desire on anybody's part here to deceive me or keep from me a fact that, if I knew, would cause me to do something differently. In fact, I am pretty sure heads would roll if that were ever the case.

Mr. **Wheeler**. Well, I can tell you, Mr. Director, that one of the interests that we have, in fact, is in maintaining and helping you to bolster the fine reputation the FBI already [74] has, and it seems to me that one way to do that is to have the kind of careful documentation that after the fact, when critics say, "You did not do this," or "You did not do that," you can point to it and show that that is not the case.

Mr. **Webster**. If we had had the gift of foresight, our documentation for oversight review might have been a little better. We thought that the tapes themselves were probably going to be enough do do it, but obviously, they were not.

Mr. **Wheeler**. The other concern about the MacDonald incident that I want to express and ask you about is the flow of communication between you and the agents in the field. You have just referred to the March 27, 1979 memorandum that granted the approval to invite MacDonald to the meeting and to offer a bribe if certain conditions were met. Your notes, one of which you also referred to, says, and I am quoting, "Deliver money only to Commissioner MacDonald." And in addition, on March 26, 1979, Brooklyn-Queens sent a memorandum to headquarters saying, "The mayor will personally accept the money and turn it over to MacDonald in the presence of undercover special agents."

Now, Mr. Director, as I am sure you know, the mayor did not turn over to MacDonald in the presence of undercover special agents the money that was passed to him at that meeting, and the money was not delivered to Commissioner MacDonald in any physical sense in the presence of any agent afterward, [75] nor is there any evidence that has ever been obtained that Commissioner MacDonald actually ever got any of the money, even though attempts were made to take fingerprints off some of the bills that were returned. The question here again is the communications between you and the field. I can tell you unequivocally that when Mr. Neal and I read your handwritten note, "Deliver money only to Commissioner MacDonald," we, without hesitation, though that that meant hand the money to Commissioner MacDonald. At the very least, that is one of the reasonable interpretations of that note. That is not what happened. Was that what you intended and, I guess, even if it was not, how would you expect an agent in the field to interpret that note, and if he had a question about it, what would he do, what would you want him to do to insure that he was following your careful instructions?

Mr. **Webster**. Well, I am not sure that I know how to answer the question. If he had a doubt about it, he should be inquiring what is meant. Those communications, I am told, were promptly communicated to the field; that is, those special instructions, and the agents were aware of them. There were also along the line people who would guide them in that type of problem, including the U.S. attorney and also, higher ranking officials, who would report to me what they had undertaken to do, believing that it was consistent with what I had in mind.

[76] In that particular case—and I would like to avoid if I can the issue of Commissioner MacDonald's guilt, because reasonable minds may differ on that—I did not exercise prosecuting discretion, and that is not my job. The Department of Justice reviewed all the facts, came to a prosecutive determination, submitted it to a grand jury, and an indictment was returned. So I think we can at the least say that a grand jury believed that there was reasonable cause to believe that Commissioner MacDonald had violated the law.

What I wanted to avoid here is what I think I mentioned earlier. I wanted to avoid Mayor Errichetti taking $100,000 and reporting to us later that, yes, Commissioner MacDonald had accepted it and he sends his thanks. That is the traditional bagman approach; it was unacceptable to me. So I had imposed upon our agents a slightly unreal requirement, which was that in every case, the person must be there, must demonstrate that he knows what is happening and make any representations that are necessary to establish his case.

I did see the MacDonald case sometime after it occurred. I was told what had taken place, including a report that he looked in the bag and saw the money. So as to my concern that he could say, "I wasn't there, never heard of the money," and so on, it would have been much better if he had picked up the bag and said, "Thank you very much." But we have made other cases on less than that in the courts, including, if I am not [77] mistaken, I believe it was Congressman Murphy—or Congressman Jenrette—it does not make much difference. My concern was to avoid that problem of letting substantial Federal funds go out and then depend upon an intermediary who was not our agent and who was going to be a defendant himself, and try to make a case on that kind of showing, when we might be dealing with someone who was, in fact, not involved or never involved. So this was an effort to bring that person before the camera so we would have an accurate record of what actually took place.

Mr. WHEELER. When you said in your handwritten notes—I guess I am still not clear on exactly what you meant at the time—when you said, "Deliver money only to Commissioner MacDonald," what did you mean?

Mr. WEBSTER. I had in mind having him there, not giving it to Errichetti to take somewhere else, but giving it under such circumstances that there would be either actual or very constructive possession of it. At that particular point in time, I do not suppose it entered my mind whether he was going to pick up the bag or someone else was going to pick up the bag, or how they were going to accommodate this problem that crooked public officials seemed to have in common, that is, avoid the money; how much can we do.

So we came up with this scenario which was reasonably convincing for this one—I doubt that it will be for some future one—but that the undercover agent was saying that the [78] sheik whom he represented wanted to know that he was dealing with someone who was up-front with him, that he could be face-to-face with him. Now, that developed and evolved into the more specific instructions after MacDonald, as we got into other people, and as a result of the earlier experiences, to make it clear to these people they were going to have to make those representations. If they had a corrupt person, that person was going to have to be corrupt in front of a person he believed was corrupt.

And I think it is to the great credit of Mr. Amoroso and the others that they were able to extract that kind of thing against people who really never want to get near the actual dollars, in public.

Mr. WHEELER. One of the other important issues, as you know, that we have focused on in this study has been the reliability on the word of a corrupt middleman, and one of the things that has been stated by a number of FBI officials is, in determining whether to rely on the word of a corrupt middleman, you look at his track record and how he has performed. Errichetti played a very central role later on with respect to some other individuals. The MacDonald incident, there were two things about it that I want to know whether these were brought to your attention for future purposes in terms of relying on Errichetti. One, again, the Brooklyn-Queens office sent to you, to the headquarters, on [79] March 26, a memo saying, "The mayor will personally accept the money and turn it over to MacDonald in the presence of undercover special agents." That was not done.

Did the fact that Mayor Errichetti did not do what, at least, you were told he had represented he would do——

Mr. WEBSTER. And turn it over to whom?

Mr. WHEELER. To Mr. MacDonald.

Mr. WEBSTER. And what was the date of that?

Mr. WHEELER. That was March 26, 1979.

Mr. **Webster**. My approval on this is dated March 29, so it is very possible that I was told about it, and that that influenced my opinion here. I have no clear recollection of it, but I know that there were discussions about how the money was going to be handled. Almost all of them wanted to do it another way. In fact, I am sure you have recently scrubbed the record more thoroughly than I have. In a number of cases where our agents pressed for this type of confrontational corruption, the middlemen complained about it, that, "You do not know how this is done. This is done differently. You cannot treat them that way. You have got to do these things, and make these sorts of moves."

I may have gotten off the question; I am sorry.

Mr. **Wheeler**. You answered it. Right after that meeting, Mr. Director, there was a meeting with agent Amoroso, Mr. Weinberg, Mr. MacDonald, and Mr. Errichetti, at which Mr. [80] MacDonald was very angry, and people had to try to calm him down, and one of the recorded tapes of that conversation shows the question being asked, "Why is he so angry?" and the answer is—and this is Weinberg answering—"Because he says he was set up."

So, MacDonald was angry because he thought he had been set up. Were you told about that? This occurred immediately after the meeting.

Mr. **Webster**. I have no recollection of it. I think I saw something to the effect that he had calmed down.

There is a theme through some of this that some of the people thought that the money was not going to be shown, and the money was shown to them, and then they had to deal with the fact that the money was shown to them, and that angered them, because that was not according to their understanding of the script.

Mr. **Wheeler**. I am going to limit my questions, Mr. Director, in light of the hour, but the next transaction that you approved was of an individual, who has not been named on the record, but this individual was a New Jersey person, not a Member of Congress, and the bribe to be offered if it were to be offered was going to be for $50,000, and that was why it required your approval was because of the size of the bribe offer. But even though what we call the bribery guidelines required, or appeared to require, your approval for that size [81] of a bribe, the approval document does not indicate that you approved of this particular bribe, or even that the Associate Director approved of it. Do you know the individual I am talking about?

Mr. **Webster**. I am going to see—not offhand, but maybe somebody else can—[conferring with staff]——

Mr. **Wheeler**. While they are looking for that—well, I will come back to that, Mr. Director.

Mr. **Webster**. All right.

Mr. **Wheeler**. Let me go to the transaction involving Congressman Myers, because he is the first of the asylum scenario defendants. The approval for the Myers transaction was based upon the word of Mayor Errichetti. Now, at the time that you approved the meeting for Congressman Myers, the information that could have been made available to you, but that is not shown on any of the documents as having been made available to you, included all of the information that I have already gone over with you about Errichetti's false statements with regard to members of the Casino Control Commission, the statement by Mr. MacDonald that he had been set up, the misrepresentation by Errichetti that he would hand the money to MacDonald in front of Mr. McCarthy. There is no reference in the approval document to the transaction that I have just asked you about that we are going to come back to. There is no reference to the other false statements in that [82] area made by Mr. Errichetti. But when you were asked to approve the bribe offer, or the meeting for a bribe offer, to Congressman Myers, do you recall whether you got any of that information about Errichetti's unreliability orally from any of your subordinates?

Mr. WEBSTER. I do not recall that I got any special information about Mayor Errichetti other than that contained in the formal request and any information I might have already been aware of in terms of his ready involvement—that he was one of the kingpins in the whole operation and had already provided us with a list of names and a bunch of other things, I think, at that point in time.

Mr. WHEELER. All right. Now, of course, the Myers transaction was successful in the sense that former Congressman Myers took the money in front of the cameras——

Mr. WEBSTER. He practically seized it.

Mr. WHEELER. But the next instance involving Mayor Errichetti was the—I am going to just skip over the Lederer incident, but again, that was one that indicated Errichetti's reliability—but we then come to the Noto incident on September 19, 1979, and that is the one, you may recall, in which Errichetti said that he would produce a high-ranking immigration official named Mario Noto, and, in fact, he produced a ringer. And because agent Amoroso and the FBI officials had gone to the trouble of getting a picture of the true Mr. Noto, when the [83] ringer showed up, agent Amoroso knew that he was a ringer. But even though at that point, the FBI knew that Errichetti was willing to defraud the very people with whom he was dealing; namely, Amoroso and Weinberg—and even though the FBI—and now, I am speaking institutionally, and not you, personally—the FBI knew some of the other failings of Errichetti in the past, tempered, of course, by his successes with Myers and Lederer, nevertheless, on October 2, 1979, you wrote a handwritten note on one of the approval memorandums for some other Congressmen, saying, "We will approve further payments only if brought to undercover agents by Criden/Errichetti."

What I would like to know, Mr. Director, is whether, when you wrote that note, you personally were aware of the Noto incident and of Errichetti's other failings previously in the Abscam investigation.

Mr. WEBSTER. That note was written for me by my special assistant, who is not with me now—he is a former law clerk and is in private practice—so that I cannot say that those were my exact words. I was aware of the Noto incident. I cannot tell you that I was aware at that time that Errichetti was responsible for the Noto incident.

My purpose in writing this was the other part of the note, that as to say that we did not want our undercover agents soliciting Congressmen or Senators. This was in October, and we were beginning to see the end of our rational leads, and I [84] was more comfortable with the undercover scenario with people coming to us than I would have been with the idea of one of our undercover agents trying to detect criminality in Congressmen. In all of these cases, they came to us; they might have come to us through an intermediary, but we were not out as special agents, trying to test them, and I did not want it to appear that we were, and the thought that was intended to be conveyed here was not so much Criden is reliable or Errichetti is reliable, but I wanted them brought by the intermediaries, rather than to have our people out on the street. And we were getting close to a point, at one point, as I remember, when we were looking toward the termination of the operation. This does not reflect on my part any specific awareness or lack of awareness of the Noto incident. I was troubled by the Noto incident, discussed it a number of time with those who worked with confidence men, and was informed and believe that is true that many of these people are potentially going to shift gears on you; if they can make an extra buck, they are going to.

It must be remembered that Errichetti was not a cooperative witness. He did not know he was dealing with us. He was one crook, trying to rob another crook.

Mr. **Wheeler**. Mr. Chairman, I have several more questions but I should ask you what your pleasure is and that of the Director.

[85] Senator **Mathias**. Let me interject right here, on the question of compensation of corrupt middlemen. There is a professor at Harvard named Stanley Hoffman who has a rule of proportionality—he deals largely in matters of high international affairs—but the rule of proportionality is one that you can apply domestically as well. What about paying these people? Let me ask you a very personal reaction. How do you feel when the Department of Justice pays Mel Weinberg substantially more than it pays you?

Now, I put a high value on your services to this country, but where is the rule of proportionality here?

Mr. **Webster**. I do not know, Mr. Chairman. You set my salary. [Laughter.]

Senator **Mathias**. But you set Mel Weinberg's salary.

Mr. **Webster**. Well, maybe I am more generous than you.

Senator **Mathias**. According to the testimony that we have here, Mel Weinberg, over a 3-year period, got something like $248,000. Average that out at over $70,000 a year. Now, maybe his services were worth it. Obviously, you thought so over that period of time. But if you pay him too much, then you keep this thing going.

Mr. **Webster**. That is right.

Senator **Mathias**. The goose that lays the golden egg wants to be fed. Where is the rule of proportionality?

[86] Mr. **Webster**. Well, it is there somewhere. I do not pretend to be an expert in it. I doubt that we can find any real experts in it. We know that on these long investigations with numerous trials that we are going to have to have the continued cooperation of these witnesses. They are going to have to help us put the cases together, remember incidents, respond to discovery, appear as witnesses, over a protracted period of time. If we cut off their funds, or cease to compensate them for work that they are doing, they may either leave us, or they may go off and supplement their income and we may end up spending far more money keeping track of

them to be sure that they are not doing something they should not be doing, than we would by simply being reasonably liberal in what they should receive.

I do not know how you go about that I wonder about it all the time. Fortunately, Judge Pratt looked at it searchingly and found no problem.

Senator **Mathias**. Judge Pratt found no problem from a legal point of view, but I am really asking you from a policy point of view. What is the effect on morale of your people? They get less than you do, and that means they get considerably less than Mel Weinberg got.

Mr. **Webster**. Well, that is another story. But as far as the agents were concerned, naturally, those who were most intimately involved in the investigation were the ones most **[87]** anxious to see that he was reasonably compensated. The reticence was at my level, rather than at theirs.

Senator **Mathias**. Well, I have to say that I am troubled by this particular aspect, that when you feed an alligator, you do not necessarily satisfy his appetite, and he wants to keep on eating.

Mr. **Webster**. I think it is very important to avoid bounty-type compensation, and I think that is a per capita type of thing. If we are taking up their full time, we have to arrive at something that is fair and reasonable.

Senator **Mathias**. Well, this is one of the points that I think the committee is going to be troubled by, and I do not know that we will do any better job than you have in finding a satisfactory solution. I think after all, all human problems are not necessarily susceptible to being reduced to some kind of a neat formula, and I am the last one to think that they are. But it seems to me that this is one that we really ought to think very hard about.

Mr. **Webster**. I agree, Mr. Chairman, and we have the same problem with our informants and the amounts of money that we pay them for information in the whole range of our investigative work. Over the years we have developed methods of control, approval, reasonableness, and so on. I am not aware of anybody who has worked for the Bureau who has received this kind of compensation, but I am not aware of anyone who **[88]** has been this much involved over so long a period of time, either.

Senator **Mathias**. Senator Rudman?

Senator **Rudman**. I think that any other questions I have, I will probably ask counsel to submit for the record. I believe the point you have just covered with Judge Webster is a vital one, and I would just politely disagree that there was not at some point, if you read the transcripts and listen to the tapes, certainly, not on the part of the Bureau but on the part of the people the Bureau had set in motion here, a certain bounty-hunters' attitude on the part of some of the corrupt middlemen. I think you will find evidence of that, and that is precisely the problem that I am concerned with, and I expect that you will be addressing that, if I judge your answers correctly.

So I really would thank Judge Webster and have no other questions, Mr. Chairman.

Senator **Mathias**. Mr. Neal, do you have any further questions?

Mr. **Neal**. I do not, Mr. Chairman.

Senator MATHIAS. Mr. Wheeler?

Mr. WHEELER. One more question, Mr. Director, because I think it is one that we need your personal input on. There has been a recommendation made in one of the hearings that in sensitive circumstances cases, however that is ultimately to [89] be defined, you personally ought to be the person who prospectively approves the operation and keeps a guiding hand, in some sense, on that operation. I wonder if that is feasible and how you feel about it, given that in 1977, there were only 53 FBI-funded undercover operations, and in 1981, there we[illegible] of which 92 were in the group I category. One of the thi[illegible] learned in my brief time working on the Hill is that ev[illegible] a committee wants an answer from the FBI, they would li[illegible] hear Judge Webster give that answer, and you have a lot of [illegible] responsibilities. I wonder if it is really, as a practical matter, [illegible]ble or realistic for anyone to expect you to be able to approve [illegible] meaningful way and monitor in a meaningful way, 400-some-odd—and the number may go up, for all we know—undercover operations, or if it is just the sensitive ones, 92 of them. And if not, what do you suggest the structure ought to be?

Mr. WEBSTER. Well, I appreciate the question because in reality, undercover work represents less than 1 percent of our field resources. There are monumental other problems that require my day-to-day attention.

I should know when there are extremely sensitive cases, and they are detailed in the guidelines, the ones that I ought to know about and approve. We are not just talking about bribery, but we are talking about violence, potential for violence, crimes being committed, sensitive areas, [90] penetration of domestic organizations, matters of that kind. In addition to that, I think that I should be kept generally informed of what is going on. I do require periodic reports on the kinds of issues that the Undercover Committee has developed. The Assistant Director for Investigations, or when that place is filled, the Executive Assistant Director for Investigations, is in close working relationship with me, reports to me regularly. I see them on a regular basis and have a direct line, telephone communications, with them.

I expect that executive to know, as in a business or in the Department of Defense or anyplace else, I expect that executive to know the kinds of things that I should be told about, even though the guidelines do not require it. As a matter of fact, there are a number of cases where, under the guidelines, he would not even have to know, but he is told, and I am told, because of their unique nature and because of the problem areas. That is a matter of judgment, and I simply do not think it is wise to solve every problem by requiring the Director to look at it. Pretty soon, I will not be looking at it nearly as closely as someone else with a little more narrow range of responsibility.

Mr. WHEELER. Thank you, Mr. Chairman.

Senator MATHIAS. If there are no further questions, then, I think we have come to the end of this hearing.

Let me thank you again, Judge Webster, and through you, [91] the other officials of the Bureau for the cooperation we have had, but to remind you that we still have an important phase of this work yet to be done. I think what you have said here today about your support for the concept of a charter, for the support for the language in the charter that may be pertient to this subject matter, is an addition to this whole discussion, and we will be in further touch as we go through this process.

I think it is of value to at least find out the areas we agree, rather than to get up to next January or February and the Judiciary Committee and have a confrontation between the Department of Justice and Congress over the direction we want to go here. And if we can thrash this out in the context of this hearing, I think we will make some real progress.

Mr. WEBSTER. Mr. Chairman, excuse me for interrupting. On the issue of the charter, I speak only for myself.

Senator MATHIAS. I understand. You made that very clear. But you will have a lot of sympathy for those views around here.

Mr. Neal?

Mr. NEAL. I was just going to say, Mr. Chairman, that with the Director's tolerance, we will be submitting some questions to him that we really will not take the time to do today. Mr. Wheeler had a laundry list of questions, but it does get time consuming, and we will submit them.

[92] Senator MATHIAS. Will 1 week, Mr. Neal, be satisfactory, and will it be satisfactory with you, Mr. Webster?

Mr. NEAL. For the initial questions, Your Honor, unless something turns up in the meantime.

Mr. WEBSTER. Surely.

Senator MATHIAS. We will hold the record open, then, for—well, let us make it through next week—we will hold the record open through the 8th of October for the submission by counsel and by members of additional questions and for Judge Webster to respond.

[See exhibits 21-30 at the end of this day's hearing.]

The committee stands adjourned subject to the call of the Chair.

[Whereupon, at 12:30 p.m., the committee was adjourned, subject to the call of the Chair.].

EXHIBIT 21

CHARLES MC C. MATHIAS, JR., MD., CHAIRMAN
WALTER D. HUDDLESTON, KY., VICE CHAIRMAN
JAMES A. MC CLURE, IDAHO
ALAN K. SIMPSON, WYO.
WARREN B. RUDMAN, N.H.
DANIEL K. INOUYE, HAWAII
DENNIS DE CONCINI, ARIZ.
PATRICK J. LEAHY, VT.

United States Senate
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS OF THE
DEPARTMENT OF JUSTICE
(Pursuant to S. Res. 350, 97th Congress)
WASHINGTON, D.C. 20510

October 5, 1982

The Honorable William H. Webster
Director, Federal Bureau of Investigation
Ninth Street and Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Webster:

At the Select Committee's public hearing on September 20, 1982, it was agreed that the record would be kept open through October 8, 1982, for the submission of additional questions to you in writing by members of the Select Committee and by Messrs. Neal and Wheeler, counsel to the Select Committee. Attached to this letter are questions submitted by me and Senator Inouye.

In several of my questions, I have referred to specific documents reviewed by Messrs. Neal and Wheeler pursuant to Mr. Giuliani's letter of June 17, 1982. Those references are made solely to assist you in understanding the focus of my questions and to enable you to respond. If you wish to have us omit from the questions published in the transcript and report any such reference, we will make the necessary amendments.

Because the Select Committee's final report must be submitted by December 15, 1982, we will appreciate receiving your responses to these questions by October 25, 1982.

Sincerely,

Charles McC. Mathias, Jr.
Chairman

Encs.

QUESTIONS SUBMITTED BY SENATOR MATHIAS

FOR DIRECTOR WILLIAM WEBSTER

1. Why was Special Agent John McCarthy "relieved of all active responsibility in connection with Abscam" on March 31, 1979? (See Memorandum from Special Agent McCarthy to SACBQ on May 7, 1979.)

2. A memorandum from Mr. Gow to Mr. Moore dated July 2, 1979 (Serial No. 141) states that "contacts will be made with [a specified person*] to ascertain if he is amenable to payoff."

   a. On what basis did the FBI decide to contact that person for that purpose?

      i. Who made the decision?

      ii. When was the decision made?

   b. Why was a similar decision not made with respect to the other persons named by Mayor Errichetti in his handwritten list of March 30, 1979, and in the picture book he provided to the FBI on March 31, 1979?

   c. Was an indices search or other background search done on that person before July 2, 1979? If so, identify each FBI document that reflects the request for or results of that search.

   d. Was an indices search or other background search done on other persons named by Mayor Errichetti in his handwritten list of March 30, 1979, and in the picture book he provided the FBI on March 31, 1979? If so, identify each FBI document that reflects the request for or results of that search.

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* Pursuant to a vote of the Select Committee, specific individuals will not be named in this document unless those individuals' names have previously been publicly revealed in hearings of the Select Committee.

3. A memorandum from Mr. Gow to Mr. Moore dated July 26, 1979 (Serial No. 148) identifies Senator Williams and three other persons as "current targets" of Abscam.
   - a. Who selected the latter three persons as targets?
   - b. What factors led to their being selected as targets?
   - c. When were they selected as targets?
   - d. Identify each document that reflects the basis on which they were selected as targets.
   - e. Was an indices search or other background search done on each of the three before July 26, 1979? If so, identify each document that reflects the request for or results of the search.

4. FBI representatives have stated that one reason for the Abscam practice of authorizing meetings to be arranged, with persons said by middlemen to be corrupt, based solely on the word of the corrupt middlemen was to avoid subsequent criticism of selective targeting. After Mayor Errichetti provided names to the FBI on March 30, 1979, and on March 31, 1979, did the FBI tell Mr. Weinberg or Agent Amoroso to try to induce Mayor Errichetti to arrange meetings with each named person?
   - a. If so, state the following:
     - i. the identity of the person who so instructed Mr. Weinberg or Agent Amoroso
     - ii. the identity of each document reflecting the instruction
     - iii. the date of the instruction
     - iv. what was done pursuant to the instruction.
   - b. If not, state why no such instruction was given.

5. Did any FBI official request or demand that Agent Amoroso, Agent McCarthy or Agent Good prepare an FD 302 or other written description of how the list of March 30, 1979, was obtained from Mayor Errichetti? If so:
   a. Who made the request or demand?
   b. Of whom was the request or demand made?
   c. When was the request or demand made?
   d. Identify each document prepared pursuant to the request or demand.
   e. Identify each document reflecting the request or demand.
   f. Did FBI policy on March 30, 1979, require the special agent who received the handwritten list from Mr. Weinberg on that date to prepare an FD 302 describing the circumstances under which Mr. Weinberg obtained the list? If so, in what document did that policy appear? What was the policy, *in haec verba*?

6. A memorandum from Mr. Gow to Mr. Moore dated June 22, 1979 (Serial No. 136a) reflects approval to offer a bribe of $50,000 to a specified person if various conditions were met. The document does not reflect the approval of the Director or of the Associate Director.
   a. Did the Director approve the offer? If so, identify each document reflecting his approval.
   b. Did the Associate Director approve the offer? If so, identify each document reflecting his approval.
   c. If the Director did not approve the offer, explain why he did not.
   d. If the Associate Director did not approve the offer, explain why he did not.
   e. Were Assistant Directors authorized to approve bribe offers of $50,000 in June 1979?

f. Was an indices search or other background search done on the specified person before June 22, 1979? If so, identify each document that reflects the request for or the results of that search.

g. The meeting held by Agent Amoroso and the specified person focused on a discussion of a check-cashing license.

   i. Did the FBI do any research on requirements for such licenses in New Jersey before the meeting? If so, who did the research, and where is it memorialized?

   ii. What was the purpose of discussing such licenses with an officer of a political party in the State of New Jersey?

   iii. Did the FBI do any empirical research on the ease or difficulty of obtaining such a license before the meeting? If so, who did it, and where is it memorialized?

7. A teletype from Director Webster to HQ, Miami, Newark and Philadelphia (Serial No. 262) dated September 24, 1979, states that Abscam is to be directed and controlled at FBI Headquarters, with all tapes going to FBI Headquarters. What circumstances caused that decision to be made at that time, rather than at some earlier time? Who made the decision? Based on whose recommendation?

8. A memorandum from Mr. Gow to Mr. Mullen dated October 26, 1979, describes four needs or concerns expressed by Director Webster and Mr. Heymann (Serial No. 299).

   a. Explain the nature of each concern or need.

   b. Describe the circumstances that led to the expression of each concern at that time, rather than at some earlier time.
   c. Describe what was done to satisfy each concern or need.

9. A memorandum from Mr. Gow to Mr. Mullen dated November 1, 1979, states, "It has been pointed out to both Goode [sic] and Amoroso that futher contacts with Congressmen concerning the political asylum scenario should be terminated." (Serial No. 304)
   a. Who made the indicated decision? When? Based on what circumstances?
   b. Meetings with Senator Pressler and Representatives Kelly and Jenrette occurred after November 1, 1979, and the asylum scenario was used.
      i. Who countermanded the November 1, 1979, order? In what document?
      ii. Why was the November 1, 1979, order countermanded?

10. On November 7, 1979, a meeting with Senator Pressler was approved on short notice. John Jacobs, who was then a Strike Force attorney, has testified that he would not approve the meeting on such short notice today.
    a. Do you agree that meetings should not be approved on such short notice?
    b. What internal safeguards, if any, does the FBI now have to reduce the likelihood that a similar incident will occur in the future?

11. What was the relationship between Abscam and Goldcon?
    a. What political figures were investigated in Goldcon?

b. When were they identified as subjects of investigation? By whom? Based on what evidence?

c. When did Goldcon open as an approved undercover operation? For what purpose?

12. According to the Senate Judiciary Committee Staff Report on the Vesco Investigation, Agent Amoroso met with former Democratic National Committee Chairman John White in September 1979.

a. Why?

b. Under what operation?

c. Who approved the meeting?

13. Was Melvin Weinberg an informant in the Goldcon operation? If so, during what period? For what purpose? On whose approval?

14. FBI representatives told us that Agent Houlihan has admitted having erased or destroyed an Abscam audio tape.

a. Did Houlihan destroy or erase a tape? How many, when, and why?

b. Did he discard or lose a tape? How many, when, and why?

c. Is it proper under FBI policy to destroy or erase tapes? If so, where is that policy articulated?

15. Agent Amoroso has admitted buying an automobile from Melvin Weinberg.

a. What was the purchase price paid by Mr. Weinberg?

b. How much did Agent Amoroso pay to Mr. Weinberg?

c. How much did Agent Amoroso pay to the person who sold the automobile to Mr. Weinberg?

d. What was the bluebook value of the car when Agent Amoroso bought it?

16. What provisions exist in FBI internal regulations or manuals with regard to agents' financial transactions with informants?
    a. Loans?
    b. Sales?
    c. Purchases?
    d. Gifts?
    e. Did those provisions exist in 1980? 1981?

17. John Jacobs was critical of the decision to allow Mr. Weinberg to live 1200 miles from the field office in charge of his activities, his supervisor, John Good, and the Brooklyn Strike Force lawyers. Agent Amoroso lived more than twenty miles away from Mr. Weinberg.
    a. Would the same decision be made today?
    b. Should special procedures be used to control, monitor and supervise an informant located so far away? What procedures?

18. An FBI representative testified before the Select Committee that sanctions can be imposed against agents who violate guidelines and provisions in the Manual of Investigative Operation and Guidelines. What are they, and where are they found?

19. List the acts for which agents have been sanctioned since 1977. What were the sanctions for each such act?

20. The documents of at least one FBI undercover operation, Lobster, reflect complete, detailed record-keeping. There are significant differences between Lobster and Abscam, but several practices in Lobster seem applicable to any undercover operation. For example, although FBI representatives have contended that one reason many conversations were not recorded during Abscam is that

agents and the informant travelled constantly, there could have been FD 302's memorializing material conversations. Is there any reason not to require the following practices in the Agents' Manual or elsewhere?

a. FBIHQ supervisor sends a packet to every agent who begins working on an undercover operation. The packet includes:
   1) latest learning on entrapment
   2) consensual monitoring requirements
   3) undercover guidelines
   4) instructions on 302s
   5) instructions on recording
   6) instruction on contemporaneous logging of evidence
   7) instructions on contemporaneous logging of tapes
   8) requiring monthly reports listing
      a) new targets
      b) changes of direction
      c) changes of geographic scope
      d) changes of crimes being investigated
      d) new techniques used
      f) other significant developments
   9) instructions on logging all conversations with potential or actual targets

b. HQ supervisor should demand compliance with the foregoing instructions.

c. Prior to termination of covert stage, undercover agents and supervisor should be required to meet with experienced HQ people to prepare for termination matters, such as dealing with the press, marking evidence, preparing evidence, and debriefings.

d. Memos on why conversations were not recorded.

e. Monthly summary of all consensual monitoring: parties, dates, topic.

21. The FBI has had to pay substantial sums to settle suits arising out of FRONTLOAD The problem there arose because the informant had ready access to a legitimate cover business and used it unlawfully. Director Webster testified before another congressional committee in April of this year, "We make a special effort now to keep the cooperating witness away from back-stops, that is, corporations or individuals who provide cover for us, to deal, so that they do not pick up indicia of authority or other types of equipment that they could use in some other scam purpose." What safeguards have you instituted to prevent recurrence of this kind of situation?

Questions re FRONTLOAD

1. Mr. Howard was convicted of "similar frauds in an unrelated matter." Was any action taken against him because of his misconduct in FRONTLOAD?

2. Please describe the process by which it was determined that Mr. Howard was "suitable" for service as a cooperating individual. Did Howard have a criminal record? Was his participation, like Mr. Weinberg's, part of a deal resulting from his conviction on other charges?

3. Was a written agreement ever reached with NHIC concerning liability and indemnification? Please describe the terms of such agreement or the terms that were being discussed when negotiations were interrupted by the discovery of Mr. Howard's misconduct.

4. What, if any, opportunities for illegal activity were to have been created by the agents and Mr. Howard in the FRONTLOAD scenario? Were the bonds

that were to have been written legitimate? Was the bonding company scenario intended to place agents in a position where they could observe illegal conduct, or was it contemplated that they would offer to engage in illegal activities with targets of the investigation?

Questions re LABOU

1. What agreement was made with Mr. Muffoletto to compensate him for services as a cooperating witness? Was he paid a salary by the FBI's construction company? Was the sale of the company to him at the conclusion of the operation part of his compensation?

2. Was any profit realized either from the ongoing operations of the construction company or from its sale to Mr. Muffoletto? How were the funds handled (i.e., paid to the Treasury, reinvested in the operations, kept as a separate fund by FBI)?

3. What role did Mr. Muffoletto and/or FBI agents play in creating opportunities for illegal conduct? Was the purpose of the construction company scenario to create such opportunities for suspected corrupt individuals and companies or simply to provide a listening post for detection of illegal activity.

4. Besides the "bust out" scheme, did the operation result in any important convictions? Specifically, were any cases made in some of the other areas originally targeted, such as bid rigging?

Questions re LOBSTER

1. What role, if any, was played by cooperating witnesses (non-agents) in this operation?

2. When the undercover agent was introduced into the scenario, what instructions was he given about his activity? Specifically, was he to wait passively for stolen goods to be brought to him, or was he to "drum up business" by soliciting stolen goods to buy? Was he to focus the investigation by soliciting particular types of stolen goods, from particular sources or transporters, etc.?

QUESTIONS SUBMITTED BY SENATOR INOUYE

FOR DIRECTOR WILLIAM WEBSTER

1. In your testimony before the House Judiciary Committee on March 4, 1980, FBI Oversight: Hearings Before the Subcommittee on Civil and Constitutional Rights of the House Judiciary Committee, March 4, 1980, pp. 131-178 (Com. Print), you indicated that the fundamental protection against the involvement of innocent people in sting or scam operations was that the undercover agents manage the interaction with the suspect brought to them by a middleman by:

> Making clear and unambiguous to all concerned the illegal nature of any opportunity used as a decoy. This provides the strongest possible protection against any unwitting involvement by individuals brought in by intermediaries or encountered directly.

In your review of the October 20 videotape meeting between the undercover agents and Congressman John M. Murphy, did you believe that the nature of the proposed illegality was made clear to Congressman Murphy in an unambiguous fashion?

2. If you determined that the tape was sufficiently clear and unambiguous, was your decision at all influenced by the October 18, 1979, memorandum requesting authority for offering a $50,000 bribe to Congressman Murphy that stated:

> ABSCAM operatives, through Howard Criden, Philadelphia Attorney, will be in contact with U.S. Congressman Murphy, for a bribe of $50,000 for promise to utilize his political influence to obtain political asylum or permanent resident status for Yassir Habib. ... According to Criden for payment of $50,000, Congressman Murphy will promise to obtain political asylum. ...

DP Ex. 64, HQ File Document #289.

3. Did you personally approve this offer to Congressman Murphy?

4. If you did approve it, at the time did you believe that Howard Criden had provided information that Congressman Murphy would, for a payment of $50,000, promise to obtain political asylum?

5. If you made such a determination, did you review any recorded conversations between Howard Criden and Mel Weinberg, or were you informed of the contents of any such conversations?

6. Since the time of that review, have you become aware that as of October 18, 1979, the date of the approval of the bribe offer, Howard Criden had not communicated with any government agents, nor was there any other source of information to believe that Criden had said that Murphy would accept a payment of $50,000 in return for a promise to obtain political asylum but had done nothing more than state that he would meet with Murphy and attempt to explain what the sheiks wanted to him?

7. Knowing this information, do you believe that the October 20 videotape provides clear and unambiguous evidence of the government's offer of illegality if Murphy was not briefed prior to the meeting and had not agreed prior to the meeting to accept a bribe?

8. Due Process Exhibit 39A, a memo from Mr. Mullen to Mr. Gow, within the Bureau, reports on November 27, 1979, "Relative to the matter concerning U.S. Congressman John M. Murphy, Staten Island, New York, it is felt that he should be recontacted and an attempt should be made to elicit from him that through his position he can guarantee political asylum for the Arab principle of ABSCAM." To your knowledge was this determination that Murphy should be recontacted based on an understanding that the October 20 videotape did not provide clear

and unambiguous proof that Murphy had agreed to perform any illegal acts in return for the receipt of money?

9. Did you attend a meeting on October 17, 1979 with Messrs. Heymann, Nathan, Margolis, McDowell and Wilson?

10. A memorandum reporting on the meeting, DP Ex. 64, HQ file document #299, notes that the ABSCAM investigation is targeted at political figures of national stature and contains the claim that the investigation was receiving daily oversight by high-ranking Department of Justice officials who were satisfied that the acts of the operatives were legal and proper. Who were the high-ranking Department of Justice officials who were responsible for daily oversight?

11. Do you believe that the authorization to offer a bribe to Congressman Murphy was subject to daily oversight by high-ranking Department of Justice officials who determined that there was a basis to believe that he had, in fact, agreed at that time to receive a $50,000 bribe in return for assisting the sheiks with their immigration matter?

12. If so, upon what do you base that belief?

13. The memorandum of the October 17 meeting ends by reporting concerns attributed to you and Assistant Attorney General Heymann including: (1) the issue of entrapment; (2) the need for new scenario; (3) the need for some type of overt act by the legislators that are bribed; (4) the necessity of knowing whether or not these legislators have committed previous similar violations. D.P. Ex. 64, H.Q. File Document #299. Upon what did you base your belief that these concerns existed as of October 17, 1979?

14. What efforts did you believe would be taken after October 17, 1979 to eliminate these concerns?

15. To your knowledge what steps were taken?

16. A handwritten note appearing on Due Process Exhibit 64, H.W. File #353, the memo authorizing a bribe payment to Congressman Murtha has been attributed to you. The handwritten note indicates that John Good, the Hauppauge resident agent, is authorized to make the bribe offer only if he pays the Congressman directly and obtains commitments. In writing this note did you have any concern that John Good, in previous bribe offers, had not paid the Congressmen directly or obtained the necessary commitments? Did you ever instruct those beneath you in the FBI what you meant by direct payment?

17. If so, to whom did you describe it and what were your instructions/

CHARLES MC C. MATHIAS, JR., MD., CHAIRMAN
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EXHIBIT 22

United States Senate
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS OF THE
DEPARTMENT OF JUSTICE
(PURSUANT TO S. RES. 350, 97TH CONGRESS)
WASHINGTON, D.C. 20510

October 5, 1982

The Honorable William H. Webster
Director, Federal Bureau of Investigation
Ninth Street & Pennsylvania Avenue, N.W.
Washington, D.C. 20535

Dear Director Webster:

Now that the Select Committee's scheduled public hearings have been completed, there remain a few matters for our investigation before we can prepare our final report. Accordingly, on behalf of the Select Committee, I request that you make available to Messrs. Neal and Wheeler, counsel to the Select Committee, the documents listed below. The documents will be reviewed, maintained and used in accordance with the terms of Mr. Giuliani's letter of June 17, 1982.

1. All documents requesting or granting SAC or Headquarters approval of each undercover operation in which Melvin Weinberg worked with Special Agent Myron Fuller in 1977 or 1978.
2. All receipts, airplane tickets, vouchers and other documents showing that Special Agent Amoroso traveled to Canada on April 1, 1979, or showing his whereabouts at any time on that date.
3. The audio tape of a March 1, 1979, conversation in which Melvin Weinberg participated, which tape has been withheld from the Select Committee.
4. All applications for approval and all documents recommending, denying or granting approval to conduct the following undercover operations:
    a. Palmscam
    b. Goldcon
    c. Investigation of Robert Vesco
5. Telephone toll records for 1978 and 1979 for:
    a. Mr. Weinberg's home in Long Island
    b. Mr. Weinberg's telephone credit card
    c. Evelyn Weinberg's trailer in Florida
    d. Abdul Enterprises' Offices

6. A list, broken down by date, place and subject matter/title of seminar, of all seminars or training sessions before January 1, 1980 on entrapment, consensual monitoring, undercover operations, or use of informants attended by each of the following agents:
    a. Amoroso
    b. Good
    c. Brady
    d. Houlihan
    e. McCarthy
    f. Fuller
    g. Askeland

7. All travel records and vouchers for all travel by Mr. Weinberg and by FBI agents Good, Amoroso, Brady, Fuller, Askeland, McCarthy and Houlihan in connection with Abscam, Goldcon or Palmscam.

8. Records of all financial transactions between Mr. Weinberg and FBI agents.

9. All documents indicating, as to each Abscam audio tape:

    a. when it was received from Mr. Weinberg
    b. who received it from Mr. Weinberg
    c. when it was first transcribed
    d. who first transcribed it
    e. when it was first duplicated
    f. where each duplicate was sent, and when
    g. where each transcript was sent, and when.

10. A copy of Agent McCarthy's request of February 2, 1978, to reopen Mr. Weinberg as an informant.

11. All written communications between Brooklyn-Queens and FBIHQ between 11/16/78 and 12/22/78.

In addition, we are still awaiting the documents requested in paragraphs 6 and 7 of my letter of August 5, 1982, to Mr. McConnell, and all of the information promised to us by FBI representatives and summarized in Mr. Wheeler's letter of August 12, 1982, to Mr. McConnell. Given the brief time remaining for preparation of the Select Committee's final report, we urgently need responses to these requests.

Yours truly,

Charles McC. Mathias, Jr.
Chairman

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EXHIBIT 23

United States Senate
SELECT COMMITTEE TO STUDY LAW ENFORCEMENT
UNDERCOVER ACTIVITIES OF COMPONENTS OF THE
DEPARTMENT OF JUSTICE
(PURSUANT TO S. RES. 350, 97TH CONGRESS)
WASHINGTON, D.C. 20510

August 12, 1982

Robert A. McConnell, Esq.
Assistant Attorney General
Office of Legislative Affairs
U. S. Department of Justice
Washington, D. C. 20530

Dear Mr. McConnell:

During the course of the Select Committee's recent public hearings, members of the Select Committee requested various data and information about FBI undercover operations, including Abscam. This letter summarizes the information that FBI and other Department of Justice officials agreed to supply to the Select Committee.

1. A list of the number of FBI undercover operations conducted pursuant to Paragraph (3) of Section J of the undercover guidelines, broken down by:
   a. the number of such undercover operations authorized by the Director in writing; and
   b. the number of operations not specifically authorized by the Director, further broken down by the number of cases in which:
      i. the Undercover Operations Review Committee found a reasonable indication that the subject of the operation had engaged, was engaging, or was likely to engage in similar illegal activity, or
      ii. the opportunity for illegal activity was so structured as to attract the predisposed.

2. A list of the number of lawsuits brought against the FBI over the past three years arising out of FBI undercover operations, broken down by:
    a. the number of cases still pending; and
    b. the number of cases that have been decided, further broken down by:
        i. the number of cases in which the FBI has prevailed, and
        ii. the number of cases in which the FBI has not prevailed.
3. a. A list of the number of cases prior to Abscam in which Mel Weinberg was a reliable informant; and
    b. a list of the number of convictions that resulted from each of those cases.
4. An explanation and discussion of those changes in the current guidelines that have resulted from the FBI's actual experience and conduct of undercover operations.
5. a. The date that Mayor Errichetti provided the FBI with a handwritten list of allegedly corrupt public officials, including Congressman Myers;
    b. the date Mayor Errichetti delivered to the FBI a picture book of New Jersey state legislators, with checkmarks designating those who were allegedly corrupt; and
    c. the name of the person or persons to whom he gave each document.
6. The date that Mel Weinberg was first reprimanded, and the name of the person by whom he was reprimanded, for coaching Senator Williams on June 28, 1979.
7. A complete accounting of Mel Weinberg's compensation from the FBI.

8. A copy of a report submitted to Judge Pratt by the Department of Justice, explaining the government's position regarding allegations that Mel Weinberg accepted gifts from Abscam targets.

As with the materials requested by Chairman Mathias in his letter of August 5, 1982, we request that you provide the information listed in this letter as expeditiously as possible.

Thank you for your cooperation.

Sincerely,

Malcolm E Wheeler

Malcolm E. Wheeler
Deputy Chief Counsel

MEW:dg

EXHIBIT 24

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

November 4, 1982

Honorable Charles McC. Mathias, Jr.
Chairman
Select Committee to Study Law Enforcement
  Undercover Activities of Components
  of the Department of Justice
United States Senate
Washington, D. C. 20510

Dear Chairman Mathias:

This letter is in response to your three-page letter of October 5, 1982, and an August 12, 1982, letter of Malcolm E. Wheeler, Deputy Chief Counsel, to Robert A. McConnell, Assistant Attorney General, Office of Legislative Affairs, U. S. Department of Justice.

The following responses were prepared by my staff and they correspond to the numbered requests contained in the aforementioned letters.

AUGUST 12, 1982

1. (a). To date, no undercover operation has arisen which specifically requires my approval under Section J(3) of the Attorney General's Guidelines on FBI Undercover Operations.

(b). Except for the rare occasions when criminal undercover operations are approved personally by me, i.e., those required by Section G of the Attorney General's Guidelines on Undercover Operations and particularly sensitive operations, all criminal undercover operations are approved by the Assistant Director of the Criminal Investigative Division. Subsequent to a favorable recommendation by the Criminal Undercover Operations Review Committee, all documents pertaining to the application, review and approval are retained on file and certain types of data are extracted and tabulated. However, we have not, to date, broken down undercover operations into those wherein the Criminal Undercover Operations Review Committee found (a) a reasonable indication that the subject of the operation had engaged, was engaging or was likely to engage in similar illegal activity; or

(b) the opportunity for illegal activity was so structured as to attract the predisposed.

2. The following is a list of law suits brought against the Federal Bureau of Investigation (FBI) over the past three years and arising out of FBI undercover operations:

A. ABSCAM

1. Harrison H. Williams, Jr. v. Civiletti, et al.
(U.S.D.C., D.C.)
CA # 81-2419

Seeks monetary damages in the amount of $6 million. Civil action is still pending.

2. John W. Jenrette, Jr. v.
Abdul Enterprises, Ltd., et al.
(U.S.D.C., D.C.)
CA # 80-1451

Plaintiff seeks a declaratory judgment and damages in the amount of $11,060,000. Case is still pending.

3. George X. Schwartz v.
U. S. Department of Justice, et al.
(U.S.D.C., E.D. Pa.)
CA # 80-0790

No money damages sought by plaintiff. Case is still pending.

B. WHITEWASH

Wil-Len Enterprises, Inc. v.
Greater Valley Construction Co., et al.
(U.S.D.C., E.D. Calif.)
CA # 79-995 RAR

Plaintiffs seek compensatory damages of at least $50,000, punitive damages of $100,000, plus costs. No disposition yet as case is still pending.

C. SPEAK EASY

1. Robert G. Phelps v. United States
   (U.S. Court of Claims)
   CASE NO. 63-81C

   Plaintiff seeks $166,158.34 in monetary damages. No disposition as action is still pending.

2. Robert G. Phelps v.
   John Horn, Thomas Rardin, et al.
   (U.S.D.C., D. Colorado)
   CA # 82-2-615

   Plaintiff seeks unspecified compensatory damages and $20,000,000 in punitive damages. Motion to dismiss is pending in District Court.

D. OPERATION FRONTLOAD

1. Arcon Construction Co. v.
   New Hampshire Insurance Co. (NHIC), et al.
   (U.S.D.C., E.D.N.Y.)
   CA # 80-2453

   Plaintiff seeks damages of $208,915 plus interest and costs. No disposition as yet as case is still pending

2. Board of Education of Union City v.
   Orlando Construction Co., Inc., et al.
   (Superior Ct. of New Jersey)
   CA # 716130-79

   Plaintiff does not state a sum certain. Case is still pending.

3. Community Insurance Center, Inc., v.
   NHIC, et al.
   (U.S.D.C., N.D. Ill.)
   CA # 81-C-0946

   Plaintiff seeks relief for summary judgment of $12,001.36 entered against them in connection with undercover operation. Case is still pending.

4. Landmine Enterprises v.
Sylvester Builders, Inc., NHIC, et al.
(U.S.D.C., S.D.N.Y)
(CA # 81-0931

Plaintiff seeks damages of $100,585,807. Action is still pending.

5. Newpark Marine Services, Inc., et al., v.
Wesco Pipeline Co., et al.
(32nd Judicial District Court Louisiana)
Ct. No. 59492

Plaintiffs seek $87,976 plus in damages. Suit is still pending.

6. Mohegan Apartments Association and John Mee., Inc., v. NHIC v. Norman Reed v. United States
(U.S.D.C., S.D.N.Y)
CA # 78-5184

Plaintiff seeks damages of $43,500,000. Action is still pending.

7. Charterhouse, Inc. v. NHIC
(U.S.D.C., N.D. Ill.)
CA # 79 C 4715

Plaintiff sought approximately $42,000,000. Case was dismissed for plaintiff's failure to provide requested discovery. Dismissal was affirmed by 7th Circuit.

8. LaSalle National Bank v. NHIC
(Circuit Court of Cook County, Ill.)
Docket No. 79 CH 8001

Plaintiff sought $100,000 in damages. Suit was dismissed with prejudice because of plaintiff's failure to pursue this action.

9. Oceanrise of Hutchinson Island, Inc. v. NHIC
(U.S.D.C., S.D. Fla)
CA # 79-512 CA

Plaintiff sought several million dollars in damages. The case was settled for $560,000.

10. Orlando Construction Co. v. NHIC
    (U.S.D.C., D. N.J.)
    CA # 78-2272

This suit for injunctive relief was dismissed with prejudice by plaintiffs.

11. Republic Steel v.
    Orlando Construction Co. v. NHIC
    (Superior Court of New Jersey)
    CA # L-34657

Plaintiffs sought damages of approximately $45,000. Suit was settled in September, 1981, for $39,733.

12. Schaff Brothers, Inc. v. NHIC
    (U.S.D.C., E.D. La.)
    CA # 78-3594

The Government paid a $12,000 settlement to plaintiff.

13. State of Utah v.
    National Collections and Credit Assistance
    Program, Inc.

This suit consolidated various Utah actions and sought $5,000. The case was settled for $5,000.

14. Kosson and Sons v.
    Board of Education of Union City and NHIC
    (Superior Ct. of New Jersey)
    CA # L 46155-79

Plaintiff sought $17,765 plus interest and costs in damages. Case was settled for $12,500.

(Additionally, the DOJ settled NHIC's administrative tort claim for attorneys' fees incurred in the defense of Operation FRONTLOAD cases. This settlement was for $200,904.51.)

E. TURNKEY

Janet Wood Gautier v. USA, et al.
(U.S.D.C., S.D. Fla.)
CA # 81-1976 CIV-JCF

Plaintiff sought $3,000,000 in compensatory damages and $3,000,000 in punitive damages. The Court dismissed this action in February, 1982.

F. OPERATION CLEVELAND

Roger Young and Patience Young v. USA
(U.S.D.C., S.D. Calif.)
CA # 80-0418-T-I

Plaintiffs sought damages in excess of $23,000,000. The Court dismissed the suit in April, 1982.

G. RE-COUPE

Anne Powers v.
John T. Lightner d/b/a Lightner Auto Sales v.
Tremont Auto Sales, Inc., et al.
(Circuit Court of Lee County, Ill.)
CA # 82-LM-16

Plaintiff seeks $250,000 in damages, plus costs. Action is still pending.

H. No Code Name - WFO Gambling Undercover Operation

Estelle Denton v. Ronald D. Kemp, et al.
(U.S.D.C., E.D. Va.)
CA #81-0568

Plaintiff sought $1,573.84 in damages. Action was dismissed by Court in April, 1982.

I. JOSEPH MELTZER

1. Kai Gulve, et al., v.
   William French Smith, et al.
   (U.S.D.C., D.C.)
   CA # 82-0847

Plaintiff seeks to recoup $47,782,815 in compensatory damages and $125 million in punitive damages. No disposition as action is still pending.

2. William Troche and Brandy Troche v.
   United States, et al.
   (U.S.D.C., S.D. Calif.)
   CA #810434

Plaintiffs seek $1 million in damages. No disposition yet as case is pending.

3. Harold B. Hughes and Nancy J. Hughes v. USA, et al.
(U.S.C.A., 7th Circuit)

Plaintiffs sought $1,500,000 plus costs in damages. Government's Motion to Dismiss was granted on January 23, 1982; however, this dismissal is presently being appealed.

3. Prior to ABSCAM, Mr. Melvin Weinberg assisted the FBI by providing information on 66 separate investigative matters. Three convictions resulted from these cases.

4. As previously testified to by FBI representatives, the Attorney General's Guidelines on Undercover Operations have not been changed as yet. To date, the FBI has merely interpreted certain sections of these guidelines in such a way as to resolve problems or inconsistencies discovered during the implementation process. Thereafter, we advised the Attorney General of our interpretations. As indicated previously, these interpretations are contained in a memorandum from the Director to the Attorney General dated July 20, 1981. A detailed discussion of those interpretations is set forth in that document which has already been provided to the Committee.

5. On March 30, 1979, Angelo Errichetti provided Melvin Weinberg with a handwritten list of allegedly corrupt public officials. On this same date, Mr. Weinberg gave this list to Special Agent (SA) John Coughlin, then assigned as the administrative case Agent for ABSCAM in the Hauppauge Resident Agency.

On March 31, 1979, Angelo Errichetti delivered to SA Anthony Amoroso, Jr., a picture book of New Jersey State Legislators with check marks designating those who were allegedly corrupt.

6. On August 5, 1979, Lawrence Sharf and John Jacobs, Strike Force Attorneys, Brooklyn-Queens Strike Force, Eastern District of New York (EDNY), during a meeting with Melvin Weinberg, cautioned Mr. Weinberg regarding his coaching of Senator Williams on June 28, 1979.

7. The following is a schedule of compensation to Mr. Weinberg from June, 1969, to September, 1982.

Honorable Charles McC. Mathias, Jr.

PAYMENTS TO MELVIN WEINBERG
SUMMARY
JUNE, 1969, TO SEPTEMBER, 1982

	LUMP SUM	SERVICES	EXPENSES
New York Field Support Account	$ 10,000.00	$ 1,100.00	$ 2,903.98
ABSCAM	$ 93,500.00	$114,100.00	$ 19,645.19
GOLDCON			$ 7,332.79
Miami Field Support Account			$ 4,712.26
TOTAL	$103,500.00	$115,200.00	$ 34,594.22

Honorable Charles McC. Mathias, Jr.

PAYMENTS TO MELVIN WEINBERG FROM THE NEW YORK FIELD SUPPORT ACCOUNT FOR MATTERS OTHER THAN ABSCAM

DATE	LUMP SUM	SERVICES	EXPENSES
June, 1969			$ 100.00
December, 1969		$ 100.00	$ 50.00
November, 1970		$ 100.00	$ 50.00
February, 1971		$ 750.00	$ 250.00
May, 1975		$ 150.00	$ 50.00
June, 1977			$ 100.00
April, 1978	$10,000.00		
April, 1978			$ 160.50
October, 1978			$ 826.43
December, 1978			$ 500.00
February, 1979			$ 817.05
PAGE TOTAL	$10,000.00	$1,100.00	$2,903.98

Honorable Charles McC. Mathias, Jr.

PAYMENTS TO MELVIN WEINBERG
FROM THE NEW YORK FIELD SUPPORT ACCOUNT
FOR "ABSCAM"

DATE	LUMP SUM	SERVICES	EXPENSES
June, 1979	$15,000.00		
April, 1979	$ 5,000.00		
December, 1978	$ 2,500.00		
November, 1978	$ 5,000.00		
August, 1978		$ 600.00	
PAGE TOTAL	$27,500.00	$ 600.00	
PAYMENTS TO WEINBERG THROUGH ABSCAM NEXT PAGE TOTAL	$66,000.00	$113,500.00	$19,645.19
TOTAL PAYMENTS TO MELVIN WEINBERG FOR ABSCAM	$93,500.00	$114,100.00	$19,645.19

"ABSCAM" PAYMENTS TO MELVIN WEINBERG

DATE	LUMP SUM	SERVICES	EXPENSES
September, 1982			$ 559.18
March, 1982		$ 2,000.00	
February		$ 2,000.00	
January		$ 2,000.00	
December, 1981		$ 2,000.00	
November		$ 2,500.00	
October		$ 3,000.00	
September	$50,000.00		
August		$ 3,000.00	
July			
June		$ 3,000.00	
May		$ 3,000.00	
April		$ 3,000.00	
March		$ 3,000.00	
February		$ 3,000.00	
January		$ 3,353.40	
December, 1980		$ 5,646.60	
November		$ 3,000.00	$ 243.18
October		$ 3,000.00	
September		$ 3,000.00	$ 1,170.44
August		$ 3,000.00	$ 752.23
July		$ 3,000.00	$ 502.31
June		$ 3,000.00	$ 482.90
May		$ 3,000.00	$ 278.59
April		$ 3,000.00	$ 784.00
March		$ 3,000.00	
February	$10,000.00	$ 3,000.00	$ 604.13
January		$ 3,000.00	$ 4,024.33
December, 1979		$ 3,000.00	$ 982.53
November	$ 6,000.00	$ 6,000.00	$ 3,334.71
October		$ 3,000.00	$ 3,008.15
September			$ 722.15
August		$ 6,000.00	$ 1,796.36
July		$ 3,000.00	
June			
May		$ 3,000.00	
April		$ 3,000.00	
March		$ 6,000.00	
February		$ 1,000.00	
January			
December, 1978		$ 2,000.00	
November			
October		$ 2,000.00	
September			$ 400.00
August		$ 1,000.00	
July		$ 1,000.00	
PAGE TOTAL	$66,000.00	$113,500.00	$19,645.19

PAYMENTS TO MELVIN WEINBERG
THROUGH MIAMI UNDERCOVER OPERATION
"GOLDCON"

DATE	LUMP SUM	SERVICES	EXPENSES
March, 1979			$1,154.01
April, 1979			$1,309.18
May, 1979			$1,139.81
June, 1979			$1,424.42
July, 1979			$ 712.98
August, 1979			$ 433.58
September, 1979			$ 558.81
October, 1979			$ 300.00
November, 1979			$ 300.00
PAGE TOTAL			$7,332.79

Honorable Charles McC. Mathias, Jr.

PAYMENTS TO MELVIN WEINBERG
FROM THE MIAMI FIELD SUPPORT ACCOUNT
FOR MISCELLANEOUS CASES

DATE	LUMP SUM	SERVICES	EXPENSES
October, 1978			$ 382.55
October, 1978			$ 222.26
October, 1978			$ 11.78
November, 1978			$ 773.74
November, 1978			$ 375.80
December, 1978			$ 173.57
January, 1979			$ 77.62
January, 1979			$ 915.76
January, 1979			$ 182.38
January, 1979			$ 591.31
January, 1979			$1,005.49
PAGE TOTAL			$4,712.26

8. My staff has consulted with Lawrence Sharf, Strike Force Attorney, Brooklyn-Queens Strike Force, EDNY, regarding the submission of a report to U. S. District Court Judge George C. Pratt, EDNY, explaining the Government's position regarding allegations that Melvin Weinberg accepted gifts from ABSCAM targets. Mr. Sharf has advised that the only documents filed with Judge Pratt regarding this matter were affidavits of Special Agents and the Government's Memorandum of Law in Opposition to Defense Motions.

OCTOBER 5, 1982

1. During the years 1977 and 1978, Melvin Weinberg did not work on undercover operations with SA Myron Fuller, except for ABSCAM. Mr. Weinberg did assist SA Fuller during these years on other investigative matters.

2. On April 1, 1979, SA Anthony Amoroso, Jr., traveled to Montreal, Canada, for the purpose of testifying at a hearing regarding a bank robbery and kidnaping investigation. The following is SA Amoroso's travel itinerary during this period and attached for your review are copies of airplane tickets issued for this travel.

DATE	TIME	TRAVEL
March 30, 1979	11:15 a.m.	Allegheny Airlines Flt. 431, Washington, D.C., to Islip, New York
April 1, 1979	1:00 p.m.	Limousine service Ramada Inn, Hauppauge, Long Island, to LaGuardia Airport, New York City
	3:40 p.m.	Eastern Airlines Flt. 872, New York City to Montreal, Canada
April 4, 1979	11:00 a.m.	Air Canada Flt. 744, Montreal to New York City
April 5, 1979	1:00 p.m.	Eastern Airlines Shuttle New York City to Washington, D.C.

3. The March 1, 1979, audio tape of telephone conversations between Melvin Weinberg and three persons identified as William Rosenberg, Edward Ellis and William Hyman, will be furnished to the Committee by SA Thomas M. Martens.

4. Those documents which request and grant approval for the GOLDCON Undercover Operation and the September 20, 1979, meeting with John White, Chairman of the Democratic Party, and SA Anthony Amoroso, acting in his undercover capacity, are attached hereto.

As Counsel for the Committee is aware, no documentation regarding the PALMSCAM Operation has been provided to the Committee due to the pending civil litigation regarding the activities of Joseph Meltzer.

5. Due to the volume of the telephone toll records requested, they will be delivered separately by SA Martens. These records are for the following telephone numbers:

Melvin Weinberg's residence telephone number, New York	516-234-4474
Melvin Weinberg's credit card number	305-229-1988
Melvin Weinberg's telephone numbers in Florida	305-229-1988 305-229-0812 305-334-1512 305-334-5988 305-746-7031
Abdul Enterprise's telephone numbers	516-234-1420 516-585-3399

6. The following is a listing of seminars and inservice training received by these Special Agents prior to January 1, 1980. In addition, it is mandatory that all investigative personnel receive 16 hours of field legal instruction each year.

SA ANTHONY AMOROSO, JR.

Criminal Inservice; February 21, 1966 through March 4, 1966
Management Aptitude Program I; September 26, 1976 through October 7, 1976
Undercover Seminar; August 15 - 18, 1977
Instructor - Undercover Seminar for Assistant Special Agents in Charge; October 10 - 12, 1979

SA GUNNAR A. ASKELAND

General Criminal Inservice; April 8 - 19, 1974

SA BRUCE E. BRADY

None

SA MYRON R. FULLER

Insurance Fraud Seminar; October 2 -4, 1979
Business Fraud Seminar; February 6 - 11, 1977

SA JOHN F. GOOD

General Criminal Inservice; July 6 - 17, 1974
General Criminal Inservice; January 23, 1967 - February 3, 1967
Management Aptitude Program I; February 1 - 13, 1976
Advanced Criminology; November 30, 1975, through December 12, 1975
Bank Robbery Seminar; November 9 - 12, 1976
White-Collar Crime/Con-Man Seminar; January 31, 1979, through February 2, 1979
Instructor - Undercover Seminar for Assistant Special Agents in Charge; October 10 - 12, 1979

SA MARTIN F. HOULIHAN

National Crime Information Center (NCIC) Instructor; June 3 - 14, 1974
General Police Instructor; July 10 - 21, 1972
Stress/Personal Problem School; April 30, 1979, through May 4, 1979

SA JOHN M. MC CARTHY

General Criminal Inservice; July 13 - 24, 1964
Special Agents Photography; July 20, 1975, through August 8, 1975
Police Instructor's Legal Matters; July 11 - 30, 1976

For the assistance of the Committee, attached hereto are various memoranda submitted to all field offices prior to January 1, 1980, for the purpose of providing Special Agent personnel with information on such varied subject matter as undercover activities, informant matters, identification and preservation of tape recordings, use of informants to conduct search or seizure of documentary evidence, use of consensual monitoring devices and uniform course of legal instruction for field offices.

7. These records are quite voluminous and a hand search is currently being conducted. This task could be greatly reduced if the Committee could narrow its request to specific dates of travel for these Agents. In the absence of a specific request, a hand search for all travel records and vouchers for these Agents will continue and the information provided at the earliest possible date.

8. I have been advised that Counsel for the Committee is in receipt of affidavits of various Special Agents which were filed before U. S. District Court Judge Pratt and which contain records of financial transactions between Mr. Weinberg and these Agents.

Documentation relative to the purchase of an automobile by SA Anthony Amoroso, Jr., will be contained in a response to your letter of October 5, 1982; specifically in response to Question #15.

9. In the absence of a request for a specific ABSCAM audio tape, it is impractical and extremely time-consuming to comply with this request. The information requested is contained in the files of five separate field offices and would require an extensive hand search which could not be concluded before December 15, 1982.

10. A document dated February 2, 1978, which requests that Mr. Weinberg be reopened as an informant could not be located. However, I am enclosing a document dated February 23, 1978, in which the New York Field Office advised FBI Headquarters that Mr. Weinberg was being reactivated as an informant.

11. I am enclosing for the Committee six separate documents which constitute all written communications between the Brooklyn-Queens Field Office and FBI Headquarters during the period November 16, 1978, through December 22, 1978.

Honorable Charles McC. Mathias, Jr.

In the last paragraph of the letter dated October 5, 1982, there is a reference to a pending request for a current catalog of all ABSCAM audio and video tapes and a catalog of tape transcripts for these audio and video tapes.

I have been advised that Counsel for the Committee is currently in possession of a catalog prepared by the FBI in May of 1980, and an addendum to this catalog provided to Counsel on August 31, 1982.

I hope that this information and documentation will be helpful to your inquiry.

Sincerely yours,

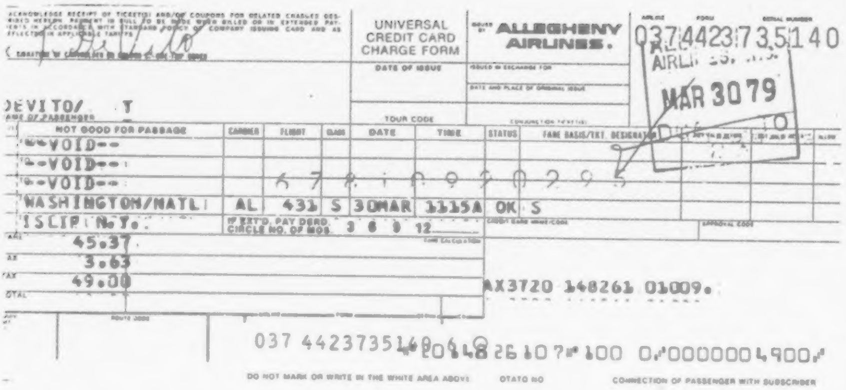
William H Webster

William H. Webster
Director

Enclosures (5)

1 - Mr. Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

ENCLOSURE in response to
Question #2, your letter
dated 10/5/82



T. DeVito

UNIVERSAL
CREDIT CARD
CHARGE FORM

ALLEGHENY
AIRLINES.

037 4423 7 3 5 140

MAR 30 79

DATE OF ISSUE

TOUR CODE

DEVITO/ T
NAME OF PASSENGER

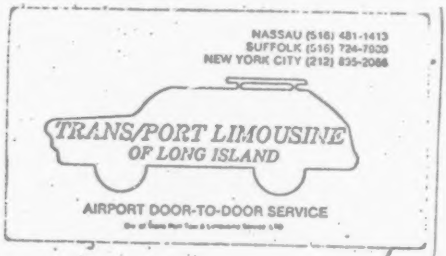
NOT GOOD FOR PASSAGE	CARRIER	FLIGHT	CLASS	DATE	TIME	STATUS	FARE BASIS/TKT. DESIGNATOR
--VOID--							
--VOID--							
--VOID--		6 7 8	1	0 9	7 0	2 9	5
WASHINGTON/NATL	AL	431	S	30MAR	1115A	OK	S
ISLIP N.Y.	IF EXT'D. PAY DEFD. CIRCLE NO. OF MOS. 3 6 9 12						

FARE	45.37
TAX	3.63
TOTAL	49.00

AX3720 148261 01009.

037 4423735140 6 0 20148261072 100 0 0000004900

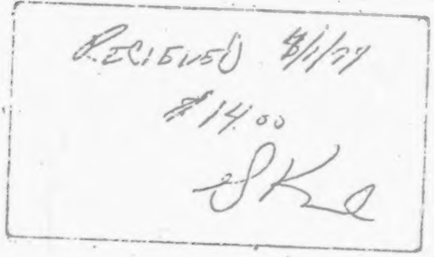
DO NOT MARK OR WRITE IN THE WHITE AREA ABOVE



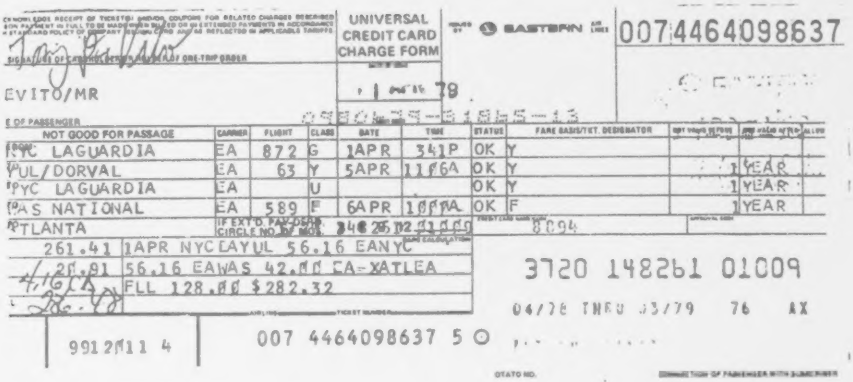
NASSAU (516) 481-1413
SUFFOLK (516) 724-7000
NEW YORK CITY (212) 835-2066

TRANS/PORT LIMOUSINE
OF LONG ISLAND

AIRPORT DOOR-TO-DOOR SERVICE



RECIEVED 8/1/79
$14.00



UNIVERSAL CREDIT CARD CHARGE FORM

ISSUED BY EASTERN AIR LINES

007 4464098637

Tony DeVito

SIGNATURE OF CARDHOLDER OR HOLDER OF ONE-TRIP ORDER

EVITO/MR

E OF PASSENGER

1 APR 78

NOT GOOD FOR PASSAGE	CARRIER	FLIGHT	CLASS	DATE	TIME	STATUS	FARE BASIS/TKT. DESIGNATOR	NOT VALID BEFORE	NOT VALID AFTER	ALLOW
FROM NYC LAGUARDIA	EA	872	G	1APR	341P	OK	Y			
TO YUL/DORVAL	EA	63	Y	5APR	1100A	OK	Y		1 YEAR	
TO NYC LAGUARDIA	EA		U			OK	Y		1 YEAR	
TO WAS NATIONAL	EA	589	F	6APR	1000A	OK	F		1 YEAR	
TO ATLANTA	IF EXT'D. PAY DESIRED CIRCLE NO. OF MOS.			348 2512 11000		CREDIT CARD NAME CODE 8094		APPROVAL CODE		

	FARE CALCULATION
261.41	1APR NYC EAYUL 56.16 EANYC
20.91	56.16 EAWAS 42.00 EA-XATLEA
4.16 EA	FLL 128.00 $282.32
286.48	

3720 148261 01009

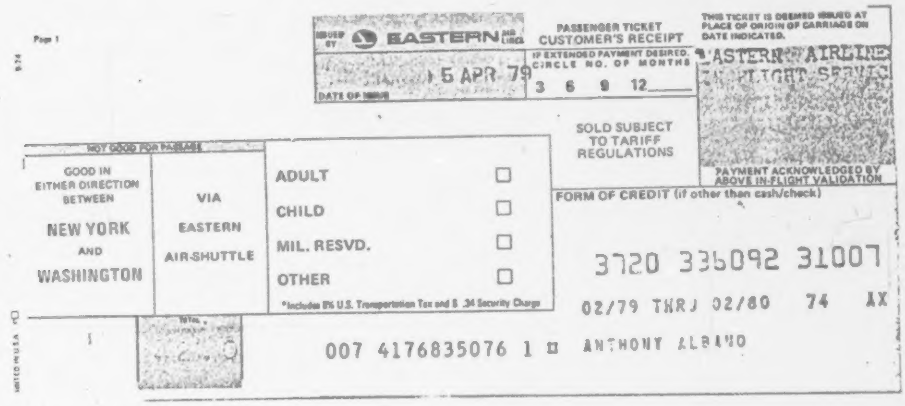
04/78 THRU 03/79 76 AX

9912011 4

AIRLINE TICKET NUMBER 007 4464098637 5 ⊙

OTATO NO.

CONNECTION OF PASSENGER WITH SUBSCRIBER



Page 1

ISSUED BY EASTERN AIR LINES

PASSENGER TICKET CUSTOMER'S RECEIPT

THIS TICKET IS DEEMED ISSUED AT PLACE OF ORIGIN OF CARRIAGE ON DATE INDICATED.

5 APR 79

DATE OF ISSUE

IF EXTENDED PAYMENT DESIRED, CIRCLE NO. OF MONTHS

3 6 9 12

EASTERN AIRLINES IN-FLIGHT SERVICE

SOLD SUBJECT TO TARIFF REGULATIONS

PAYMENT ACKNOWLEDGED BY ABOVE IN-FLIGHT VALIDATION

NOT GOOD FOR PASSAGE

GOOD IN EITHER DIRECTION BETWEEN NEW YORK AND WASHINGTON	VIA EASTERN AIR-SHUTTLE	ADULT ☐ CHILD ☐ MIL. RESVD. ☐ OTHER ☐

*Includes 8% U.S. Transportation Tax and $ .34 Security Charge

TOTAL

FORM OF CREDIT (if other than cash/check)

3720 336092 31007

02/79 THRU 02/80 74 AX

007 4176835076 1 ☐ ANTHONY ALBANO

ENCLOSURE in response to
Question #4, your letter
dated 10/5/82

0-9 (Rev. 7-21-76)

TRANSMIT VIA: Airtel

PRECEDENCE:

CLASSIFICATION:

DATE: 1/10/79

To: SAC, Miami [redacted]

From: Director, FBI

GOLDCON

ReMMairtel to Director 10/18/78 and Butelcal to Miami 12/6/78.

Bureau authority is granted for captioned undercover operation as proposed in your previously submitted operational plan. Captioned code name is also approved for identifying this operation. Financing in the amount of $27,240 has been approved and will be forwarded by separate communication.

You are reminded that in the event consensual non-telephonic monitoring is desired with any type of electronic device, prior Bureau authority must be obtained as set out in Bureau airtel to Albany dated 2/4/77 captioned, "Consensual Monitoring of Private Conversations."

Miami should insure that all expenses in connection with this operation are properly vouchered in accordance with current Bureau instructions.

Inasmuch as this is a White-Collar Crimes investigation, Agent manpower expended in conducting this operation should so be recorded under the TURK system. Should substantive violations not within the perimeters of the White-Collar Crimes Program be developed, a new case should be opened and Agent manpower so expended should be credited to the appropriate TURK classification.

Please keep the Bureau advised of all pertinent developments through the submission of a monthly airtel directed to the attention of White-Collar Crimes Section, Financial Crimes Unit.

[redacted]

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SEARCHED ___ INDEXED ___
SERIALIZED ___ FILED ___
JAN 12 1979
FBI-MIAMI

[redacted]

[redacted]

[redacted]

[redacted]

x Airtel

October 18, 1978

TO: DIRECTOR, FBI
(ATTENTION: PROPERTY-TRANSPORTATION CRIMES UNIT)

FROM: SAC, MIAMI [redacted]

PROPOSED UNDERCOVER (UC) PROJECT
MIAMI DIVISION
ITSP; FBW; MF; RICO

The role of South Florida financial manipulators is well known to the Bureau and needs no further explanation. They have appeared as participants in most of the major frauds taking place in the U. S. in the past few years. Paper from their offshore banks currently passes throughout the world.

With the growth of Miami as the major trade center with South America has come a concomitant growth of illegal trade in narcotics, guns, and stolen property, including jewelry and heavy equipment.

The following proposal for the establishment of a UC front is in response to the identified need for an imaginative, creative, and effective attack against an established cadre of professional criminals whose ranks include politicians and OC figures, as well as "con" men and thieves. The planned program calls on the experience of other Bureau operations now in effect, but is tailored to Miami's unique need. It is grandiose by intent because of the life-style of the people to be targeted. However, it can be implemented in a cost-effective way in keeping with an MBO concept.

3 - Bureau
3 - Miami
[redacted]
RF/neb
(6)

[redacted]

Searched by Phone CM.
Indexed
Serialized
Filed

[redacted]
[redacted]

TARGET AREAS

1. Advance fee swindles
2. Fraudulent offshore banks
3. Stolen and counterfeit stocks
4. Stolen art objects and jewelry
5. Thefts from Miami docks
6. Shipment of stolen heavy equipment to South America
7. Laundering of drug money and OC profits
8. Shipment of illegal guns to South America
9. Importation of narcotics
10. Political corruption

The preceding list of targets is selected not only for the importance in terms of the Bureau mission, but also because available informants are already in a position to steer subjects of these violations into an UC front.

METHODS

1. Through the initial use of reliable informants will draw suspects into the UC front based on an appeal to their need for funding, phony paper, banking connections, and outlets for stolen goods
2. Once suspects have been steered into the front, identify their victims and the origin of property they are trying to move.

[redacted]

3. Review "packages" presented for funding to determine whether it is a viable business transaction or merely a set-up for the taking of an advance fee. Once the funding has been denied, contact victims overtly in order to establish elements of the violation.

4. Receive stolen property of various types under the pretense of having the ability to move it easily outside the country, a facility highly sought after in Miami.

5. Offer the connections necessary for the laundering of narcotics money, another greatly desired service in the Miami area.

[redacted]

6. Meet with corrupt public officials who are seeking kickbacks for special favors.

IMPLEMENTATION

It is requested that the Bureau approve the following concept:

An office to be located aboard a large yacht moored in the Fort Lauderdale, Florida, area. The office will be equipped with Telex machine and other props that will give it the appearance of a quasi-legitimate and affluent business operation. The principals of this front will represent that they have South American drug money to invest.

A second office to be located in the financial district of downtown Miami. This office will bear a separate corporate name and will be passed off as being related in an unclearly defined way to the yacht office. Subjects will be passed between the two offices as part of the mystique of the supposed business transaction and to expose them to more people who could have "leaked" the information that results in their arrest.

[redacted]

[redacted]

A luxury car to be leased for the use of the UC Agent acting as principal of the front, and for transporting subjects while building the appropriate image. Two other leased cars for other UC Agents involved andffor surveillance.

Several club memberships to be used in taking subjects for business lunches and discussions in casual atmosphere.

Rental of office furniture for both locations, as well as Telex facility and telephone service.

Authority for electronic coverage of telephones, office space and vehicles.

[redacted]

Payment of $1,500 per month to NY 6774-C for work done at Miami.

PERSONNEL NEEDED

Full Time

One UC Agent of Latin descent with a basic knowledge of banking and finance to serve as the principal in the front and the person with money connections.

One UC Agent with extensive understanding of banking and finance. [redacted]

One UC Agent to serve as chauffeur and as aide in general to the principal. [redacted]

One Agent coordinator to administer the UC operation and to assist when needed in the front. [redacted]

One analyst to assist in organizing cases from their inception in a manner amenable to prosecution. Due to the complex nature of the cases expected to develop through this front, Miami believes that a Visual Investigative Analyst, working with the case Agent and the coordinator, could greatly assist in directing the thrust of the spin-off investigations.

[redacted]

[redacted]

One rotor girl to maintain a specialized index of all SUNBURN subjects and corporations and to assist with the substantive files being opened. [redacted]

Half Time

One sound trained Agent to service technical devices in office space and cars, and to assist in covering meets.

Two Agents to handle expedite matters resulting from activities within the front and to assist in covering meets.

Occasional

One accountant to assist with the orderly recording of expenditures for the front.

COST ESTIMATE - MONTHLY

Downtown Office

Office	$ 900.00
Furniture & equipment	650.00
Telephone	300.00
Telex	80.00
Answering service	40.00
Secretary	400.00
Electricity	100.00
	$2,470.00

Yacht Office

Yacht	Free (Customs seizure)
Dockage & hookups	500.00
Telephone	300.00
Furniture & equipment	200.00
	$1,000.00

Vehicles

One luxury car	500.00
Two other cars	600.00
	$1,100.00

Miscellaneous

Salary of source	1,500.00

(continued)

[redacted]

Food and beverage for "clients"	500.00
Props and unforeseen	400.00
	2,400.00
TOTAL MONTHLY:	$6,970.00

PRELIMINARY ACCOMPLISHMENTS

A Miami Agent has been working with NY 6674-C when the source is in this area. The following events have occurred in UC meets:

9/15/78 - Met with WILLIAM BELL, ED LENNICK, JACK MORRIS, and DONALD EACRET regarding worthless Certificates of Deposit (CD's). On 10/4/78, New York Agents arrested these subjects with $200,000,000 in offshore paper.

9/21/78 - Met with ROBERT ZACCHEO and WILLIAM BODINE regarding purchase of cocaine, truck hijackings, and stolen jewelry.

9/22/78 - Met SOL KAYE, a well-known fence who offered to obtain paintings stolen out of Chicago.

9/26/78 - Met JOHN LOMELO, Mayor of Sunrise, Florida, regarding sale of Sunrise Theatre. LOMELO wanted a one-million dollar kickback paid through his secretary.

9/26/78 - Met RONALD SETTLER, MICHAEL KLEIN, and MICHAEL YOELSON and discussed adveral questionable financial deals.

9/27/78 - Met RONALD SCHAFER, MORT GREGG, SIDNEY GILBERT and (FNU) ZILESKI and discussed advance fee schemes. SCHAFER indicated that he had access to an offshore bank. GILBERT is a convicted felon from England.

9/27/78 - Met GEORGE CANNON, a well-known fence and gun runner with OC connections.

ANTICIPATED RESULTS FOR SIX MONTHS PERIOD

The following results are anticipated if the proposed program is implemented:

[redacted]

1. Seizure of one billion dollars of fraudulent letters of credit, CD's, and commitment letters
2. Effective termination of fifteen fraudulent offshore banks now operating.
3. Identification of three major drug money laundering operations, including identity of money couriers and the ability to direct the cash flow of at least one.
4. Recovery of one million dollars in stolen property.
5. Seizure of narcotics with street value of one million
6. Arrest or pending indictment of 25 persons

REQUEST OF BUREAU

Bureau is requested to approve operation SUNBURN as set forth and to fund the program for six months at a cost of $41,820.00. Further request is made for an immediate advance of funds in amount of $7,000 to take care of initial expenses, [redacted]

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RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

T-DAY

FM MIAMI

TO DIRECTOR IMMEDIATE

BROOKLYN QUEEN IMMEDIAGE

BT

UNCLAS E F T O

ATTENTION: ASSISTANT DIRECTOR FRANCIS MULLEN

JAMES COCHRAN DAY. HOBBS ACT - RICO; CPO. (OO: MIAMI)

RE MIAMI TELCAL SEPTEMBER 5, 1979; MIAMI TELETYPES SEPTEMBER 5 AND AUGUST 28, 1979.

RE AUGUST 28, 1979 TELETYPE SET OUT SCENARIO FOR PRESENTATION OF ENERGY PACKAGE TO DAY TO DETERMINE WHETHER WHITE COULD ASSIST IN OBTAINING DOE GUARANTEED FINANCING.

MIAMI INFORMANT, TOGETHER WITH UCA'S, HAVE PUT TOGETHER ABOVE DESCRIBED PACKAGE WHICH PROPOSES TO TAP THERMAL ENERGY AT THE EARTH'S CRUST AND BY UTILIZING A PATTENED DEVICE CONVERTING THE HEAT TO USEABLE ENERGY FORMS. INITIAL FUNDING IS SET AT 2 1/2 MILLION DOLLARS, WITH SUBSEQUENT FUNDING OF

55 MILLION DOLLARS, BASED ON LOANS TO BE GUARANTEED BY DOE. MIAMI PROPOSES TO MEET WITH DAY ON OR ABOUT SEPTEMBER 9, 1979, TO PRESENT THIS PACKAGE UTILIZING GOLDCON BOAT AND SA ANTHONY AMOROSO UNDERCOVER. WE WOULD APPRECIATE USING SA RICHARD FARHARDT OF THE CLEVELAND DIVISION IN UNDERCOVER ROLE TO ENHANCE OUR POTENTIAL TO DAY, BUT THAT IS NOT AN ABSOLUTE ESSENTIAL INGREDIENT.

FOLLOWING THE PRESENTATION TO DAY, WE WILL ASSESS OUR CHANCES OF REACHING WHITE AND POSSIBLE DOE OFFICIALS THROUGH WHITE. IF INDICATORS ARE POSITIVE, WE THEN PROPOSE A MEETING WITH ASSISTANT ATTORNEY GENERAL PHILLIP HEYMAN TO REACH A FIRM UNDERSTANDING THAT OUR INVESTIGATIVE GOALS INCLUDE NOT ONLY WHITE BUT DOE OFFICIALS AND COORDINATION WITH OTHER FIELD DIVISIONS TO PREVENT PREMATURE ACTION AGAINST WHITE, WHICH WOULD JEOPARDIZE ONGOING SITUATIONS. WITH THE DEPARTMENT'S CONCURRENCE, WE WOULD THEN PROCEED AGAINST WHITE. ABSENT THE DEPARTMENT'S CONCURRENCE, WE WOULD NOT FEEL THAT WE CAN PROCEED AGAINST WHITE AT THAT TIME AND WOULD DELAY PROCEEDING AGAINST WHITE UNTIL SUCH TIME

AS OTHER OPERATIONS WOULD NOT BE JEOPARDIZED.

ALL INDICATORS ARE THAT GOLDCON AND ABSCAM PROBABLY CANNOT EXIST BEYOND NOVEMBER/DECEMBER AREA SINCE WE ARE NOT TAKING ADVANTAGE OF THE SITUATIONS THAT WE ARE PAYING FOR. IT MAY TAKE A PERIOD OF TIME TO PRODUCE A PROSECUTIBLE CASE AGAINST WHITE AND FOR THIS REASON WE SHOULD NOT DELAY INITIATING CONTACT WITH HIM. AN EXAMPLE IN POINT, THE LENGTH OF NEGOTIATIONS INVOLVING THE JET AIRCRAFT BEFORE WHITE IS KNOWN TO HAVE APPEARED ON THE SCENE.

MIAMI FEELS IT HAS AN EXCELLENT ENTREE TO WHITE AND IS IN A POSITION TO DETERMINE WHETHER HE IS CRIMINALLY INVOLVED IN THESE SITUATIONS.

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FEDERAL BUREAU OF INVESTIGATION COMMUNICATIONS SECTION

w

T - DAY

FM MIAMI [redacted]

TO DIRECTOR [redacted]

WASHINGTON FIELD [redacted]

NEW YORK IMMEDIATE

BT

UNCLAS E F T O

ATTENTION: BUREAU - ORGANIZED CRIME SECTION, SUPERVISOR MERRILL PARKS.

ATTENTION: WASHINGTON FIELD - SPECIAL AGENT BERNARD CERRA.

ATTENTION: NEW YORK - SPECIAL AGENT JOHN GOODE, HAPPAUGE RA.

JAMES COCHRAN DAY, AKA; HOBBS ACT - RICO; CPO; OO: MIAMI.

RE MIAMI TELPHONE CALL TO THE BUREAU SEPTEMBER 7, 1979.

ON SEPTEMBER 9, 1979, AT MIAMI UCA MET WITH SUBJECT, JAMES WOHLENHAUS AND OTHERS IN THE MIAMI - FORT LAUDERDALE AREA. THE TOPIC OF DISCUSSION DURING A THREE AND A HALF HOUR PERIOD WAS, AMONG OTHER THINGS, A THERMAL ENERGY PACKAGE BEING PROPOSED BY UCA FOR PRESENTATION TO THE DEPARTMENT OF ENERGY

(DOE), WASHINGTON, D.C., FOR A $55,000,000 LOAN APPROVAL. SUBJECT ADVISED HE HAD INFLUENCE WITH THE NATIONAL DEMOCRATIC CHAIRMAN, JOHN WHITE, WHO COULD EXPEDITE THIS PROPOSAL THROUGH HIS CONTACT AT DOE. SUBJECT AND UCA DISCUSSED AN INITIAL $25,000 PAYOFF TO WHITE. ADDITIONAL MONEY TO BE PAID SUBJECT AND WHITE UPON RECEIPT OR COMPLETION OF GUARANTEE FROM DOE.

DAY CONCLUDED MEETING BY STATING HE WOULD DISCUSS THIS TOTAL PROPOSITION WITH WHITE. IF WHITE AGREED TO TAKE ACTIVE ROLL IN MAKING HIS CONTACTS AT DOE SUBJECT WOULD TELEPHONICALLY CONTACT UCA, SEPTEMBER 11, 1979, FOR ADDITIONAL MEETINGS AND DISCUSSIONS IN WASHINGTON, D.C., POSSIBLY WITH WHITE PRESENT.

MIAMI OF OPINION SUBJECT THOROUGHLY CONVINCED OF BONAFIDES OF UCA AS SUBJECT EXTREMELY ENTHUSIASTIC ABOUT PACKAGE AND FORECOMING PROJECTS.

SUBJECT AND WOHLENHAUS TRAVELED TO NASSAU, BAHAMAS, EASTERN AIRLINES (EAL), 8:25 A.M., SEPTEMBER 10, 1979, FOR PREVIOUSLY SCHEDULED MEETING WITH ROBERT VESCO. THIS MEETING NOT RELATED TO ABOVE INFORMATION. SUBJECT AND WOHLENHAUS SCHEDULED TO TRAVEL FROM NASSAU TO WASHINGTON,

D. C., VIA MIAMI AFTERNOON OF SEPTEMBER 10, 1979. SUBJECT HAS RESERVATIONS AT FAIRFAX HOTEL FOR EVENING SEPTEMBER 10, 1979. DAY DOES NOT HAVE OPEN RESERVATIONS AT ALL TIMES AT THE HOTEL WASHINGTON. FOR THIS REASON HE HAD TO MAKE RESERVATIONS AT ANY HOTEL THAT WAS AVAILABLE. THEREFORE, HE MADE RESERVATIONS AT THE FAIRFAX HOTEL WHICH HAD THE ONLY ROOMS AVAILABLE DUE TO AMERICAN CHEMICAL ASSOCIATION CONVENTION CURRENTLY IN WASHINGTON, D.C. RESERVATIONS VALID FOR ONE DAY ONLY.

WASHINGTON FIELD REQUESTED TO AFFORD SURVEILLANCE COVERAGE OF SUBJECT WHILE HE IS IN WASHINGTON, D.C. UCA, MIAMI, WILL ATTEMPT TO COORDINATE WITH WASHINGTON FIELD. IF SUBJECT'S CONNECTING FLIGHTS ARE MADE ACCORDING TO PLAN HE WILL DEPART FROM MIAMI ON NATIONAL FLIGHT 110 SCHEDULED TO ARRIVE WASHINGTON, D.C., 6:29 P.M. SUBJECT INTENDS TO HAVE DINNER WITH JOHN WHITE AND POSSIBLY HAMILTON JORDAN. IF SUBJECT DOES NOT MAKE CONNECTIONS AT 4:00 P.M., HE WILL THEN TAKE NATIONAL FLIGHT 424 DEPARTING MIAMI 5:35 P.M., ARRIVING WASHINGTON, D.C., 8:43 P.M., AT WHICH TIME IT WOULD BE TO LATE FOR HIS DINNER MEETING. THIS INFORMATION ACCORDING TO SUBJECT. MIAMI WILL TELEPHONICALLY ADVISE WASHINGTON FIELD

OF DEVELOPMENTS AS THEY OCCUR FOR COORDINATION OF SURVEILLANCE.

• MIAMI REQUEST DISCRETE SURVEILLANCE OF SUBJECT SEPTEMBER 10, 1979, IF EARLY CONNECTIONS MADE AND FULL DISCRETE SURVEILLANCE SEPTEMBER 11, 1979, WITH PHOTOGRPAHIC COVERAGE IF POSSIBLE.

BUREAU AND WASHINGTON FIELD WILL BE APPRISED OF ANY PERTINENT ADDITIONAL DEVELOPMENTS AS THEY OCCUR.

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RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

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FM MIAMI [redacted]
TO DIRECTOR [redacted]
WASHINGTON FIELD ([redacted]
NEW YORK [redacted]
BT
UNCLAS E F T O

ATTENTION: BUREAU - ORGANIZED CRIME SECTION, SUPERVISOR MERRILL PARKS.

ATTENTION: WASHINGTON FIELD - SPECIAL AGENT BERNARD CERRA.

ATTENTION: NEW YORK - SPECIAL AGENT JOHN GOODE, HAPPAUGE RESIDENT AGENCY.

JAMES COCHRANE DAY, AKA; HOBBS ACT - RICO; CPO: OO: MIAMI.

RE MIAMI TELETYPE SEPTEMBER 10, 1979.

ON SEPTEMBER 10, 1979, SUBJECT DAY AND HIS ADMINISTRATIVE AIDE, JAMES WOHLENHAUS, ARRIVED WASHINGTON, D.C., WHERE THEY HAD RESERVATIONS AT THE FAIRFAX HOTEL. SUBJECT ON SEPTEMBER 11, 1979, ADVISED THAT JOHN WHITE WAS PREOCCUPIED PREPARING

PRESS RELEASES DURING THAT DAY AND WOULD BE TRAVELING SEPTEMBER 12, 1979, WITH THE PRESIDENT OUTSIDE OF WASHINGTON, D.C. CONSEQUENTLY, A MEETING WAS SCHEDULED FOR THE FOLLOWING WEEK, ON THURSDAY, SEPTEMBER 20, 1979, IN WASHINGTON, D.C., AT 10:30 A.M., AT THE NATIONAL DEMOCRATIC HEADQUARTERS. SUBJECT CLAIMS TO HAVE MADE ADVANCE RESERVATIONS AT THE HOTEL WASHINGTON FOR TWO ROOMS ON SEPTEMBER 19, 1979. SUBJECT WANTS TO MEET WITH UCA ON WEDNESDAY FOR CONFORMATION THAT UCA HAS $25,000 CASH FOR PAYMENT TO JOHN WHITE TO BE PRESENTED AT THE MEETING ON SEPTEMBER 20, 1979. SUBJECT CLAIMS HE HAS DISCUSSED MATTER WITH WHITE AND THAT PAYMENT IS EXPECTED AT MEETING.

MIAMI ANTICIPATES THAT IT WILL MOST CERTAINLY BE NECESSARY TO HAVE AVAILABLE $25,000 IN CASH BY SEPTEMBER 20, 1979, FOR PAYMENT TO WHITE AND THAT $5,000 PROBABLY WILL BE NECESSARY AS A PAYMENT TO THE SUBJECT SO THAT ADDITIONAL FUTURE MEETINGS CAN BE ARRANGED. SUBJECT EXPECTING TO RECEIVE SOME MONETARY GRATUITY FOR THE ARRANGEMENT OF INTENDED MEETING AND TO KEEP THE OPERATION RUNNING SMOOTHLY THE DISBURSEMENT TO THE SUBJECT WOULD BE REQUIRED.

MIAMI THROUGH ITS SOURCE IS IN CONTACT WITH THE INDIVIDUAL PREPARING THE THERMAL ENERGY PACKAGE AND UCA MIAMI HAS BEEN IN ALMOST DAILY TELEPHONIC CONTACT WITH THE SUBJECT TO INSURE THAT THERE ARE NO SURPRISE DEVELOPMENTS AT THE LAST MINUTE.

MIAMI SOURCE AND UCA WILL TRAVEL TO WASHINGTON ON SEPTEMBER 19, 1979, FOR PARTICIPATION IN THE ABOVE DESCRIBED MATTER. MIAMI REQUESTS $32,000 CASH BE AVAILABLE AT WASHINGTON, D.C., TO BE PICKED UP BY UCA UPON HIS ARRIVAL SEPTEMBER 19, 1979. ADDITIONAL DETAILS AND INFORMATION WILL BE REPORTED AS IT IS RECEIVED.

BT

CRIMINAL INVESTIGATIVE DIVISION
9/17/79

Since 4/25/78, the FBI has been attempting to verify allegations regarding the taking of bribe payments by John White, the Chairman of the Democratic National Party. Numerous meetings have been held; however, up until this time the opportunity for a direct payment to White, accompanied by his admissions that he and others would use political influence for personal gain, have not been forthcoming. This case and correlative cases involving the activities of Robert Vesco and James Day have received widespread media coverage and in the investigation of the R.L. Herring aspect of this matter, the Justice Department has been accused of a cover-up because of delays in the investigation. Inasmuch as this is the first opportunity for an undercover Agent to make a direct payment to John White, CID strongly recommends that $30,000 be provided so that the undercover Agent in this matter may make the payment to White [redacted]

[redacted]

MSP:jrg (8)

APPROVED:
Director
Exec. AD-Adm.
Exec. AD-Inv.
Exec. AD LES
Adm. Serv.
Crim. Inv.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. O.

ENCLOSURE in response to
Question #6, your letter
dated 10/5/82

TRANSMIT VIA: Airtel

PRECEDENCE:

CLASSIFICATION:

DATE: 3/15/79

To: SAC, Albany PERSONAL ATTENTION
(Attention: Principal Legal Advisor)

From: Director, FBI

UNDERCOVER ACTIVITIES,
CRIMINAL MATTERS

The use of the undercover technique has greatly expanded in recent years with considerable success. However, as the thrust of undercover operations shifts into priority areas, the legal problems associated therewith are anticipated to become increasingly more complex. Because of the possibility of exposing the Bureau and/or our Special Agents to unwarranted civil or criminal liability as a result of failure to identify potential areas of legal concern, it is henceforth required that all subsequent undercover proposals submitted to FBIHQ for approval must be coordinated with the Principal Legal Advisor (PLA) or a Legal Advisor (if so designated by the PLA). No proposed undercover operation will be approved by FBIHQ unless the legal analysis of the PLA, or Legal Advisor, is contained therein. This will necessitate a separate "Legal Analysis" section which will set forth in detail all foreseeable legal problems and methods of resolution. The steps that will be taken to resolve legal problems must be in sufficient detail to enable appropriate review by FBIHQ. This analysis and coordination will be in addition to the opinion of the United States Attorney (USA) which was the only legal advice usually reflected in the past.

2-All Field Offices

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Additionally, regular briefings must be held by the case Agent and his supervisor, with the SAC or ASAC, and the PLA, or Legal Advisor, regarding the status of all pending undercover operations, planned investigative approaches, and anticipated legal problems. These briefings are necessary to maintain proper control of the operation and to insure that legal issues are properly analyzed to minimize the exposure to unnecessary liability. Recent events indicate that some undercover operations have been undertaken without the Agents involved being fully aware of legal significance of their decisions, and the added exposure to potential liability which results therefrom. Such myopic approaches to undercover operations cannot continue if the use of the undercover technique is to be preserved.

Each PLA should make certain that a control file has been established in each office captioned "Undercover Activities, Criminal Matters." By airtel to SAC, Albany, dated July 31, 1978, under this caption, all offices were advised of previous undercover policy statements, instructions, and operational guidelines. Additional periodic communications have been forwarded to all offices captioned "Undercover Activities, Criminal Matters." Each PLA and Legal Advisor must be thoroughly familiar with all communications forwarded under the above-mentioned caption.

Legal issues, which must be addressed during the conduct of an undercover operation, span the entire spectrum of civil, criminal, and contractual jurisprudence. Being able to identify legal issues which might adversely affect the conduct of an undercover operation will not be an easy task. However, for your assistance the following discussion, which is not intended to be all inclusive, is offered to exemplify those legal issues which repeatedly occur during an undercover operation:

1) Entrapment as a viable defense has been seriously eroded since Hampton v. United States, 425 U.S. 484 (1976) wherein the court ruled that the defendant's predisposition, not the level of governmental misconduct, remains the dispositive factor in an entrapment defense. In short, Hampton makes clear the fact that if the defendant was predisposed, he cannot sucessfully raise the entrapment defense. The entrapment defense is intended to protect the unwary innocent citizen from a government trap, but it is not available as a defense for the unwary criminal. However, five justices in Hampton indicated, even though entrapment was unavailable to a predisposed defendant, that overinvolvement of government agents in criminal offenses might be so egregious as to violate due process or to warrant reversal under the court's supervisory powers.

2) Due Process violations appear to be increasingly invoked in efforts to invalidate convictions where the issue of predisposition has been decided against the defendant. Three cases, United States v. Archer, 486 F.2d 670 (2d Cir. 1973); United States v. Twigg, 24 Cr.L. 2233 (3rd Cir. 1978); and United States v. Corcione, 24 Cr.L. 2445 (2d Cir. 1979), stand for the proposition that there is a limit in which there may be governmental involvement in a crime. These cases may have a significant impact on undercover operations in the future. Other cases which further define the extent to which the Government may become involved in a criminal enterprise are: United States v. Gonzales, 539 F.2d 1238 (9th Cir. 1976); United States v. Quinn, 543 F.2d 640 (8th Cir. 1976); United States v. Reifsteck, 535 F.2d 1030 (8th Cir. 1976); Carbajal-Portillo v. United States, 396 F.2d 944 (9th Cir. 1968); and United States v. Edwards, 366 F.2d 853 (2d Cir. 1966), cert. denied, 386 U.S. 908 (1967). The above cases evince, so long as government agents do not engineer or direct a criminal activity, but only act in concert with the other participants, their conduct will not violate due process or be considered so egregious

that reversal is warranted on the basis of the court's supervisory power. See also, discussion of the entrapment defense and due process in 66 Georgetown L.J. 719, 722-723, and n. 3040. Obviously, certain acts could be so shocking that a court would refuse admittance of evidence obtained even though the Government played a minor role in the criminal activity, e.g., crimes of violence.

3) Creating Federal Jurisdiction has been challenged by defense attorneys where, for example, an individual is in possession of intrastate stolen property and the undercover Agent refers him to someone in another state. At the time the individual approaches the undercover Agent, he has not committed a Federal crime; assuming, arguendo, the stolen goods are purely of an intrastate character. As soon as the individual, however, takes the property across the state border, he has violated Title 18, United States Code (U.S.C.), Section 2314. The above cases in item number 2 are instructive and reflect that if the Government merely creates an opportunity and the individual seizes it by going across state lines, the defendant will not be able to successfully argue he has been entrapped or was the subject of a due process violation. One caveat, however, must be pointed out. No undercover actions should be taken which would precipitate the subject to perform acts he would not otherwise have done. If the acts of the undercover Agents are viewed as coercion or intimidation in causing the interstate element, a due process claim may be successful.

4) Sham criminal process and arrest of undercover Agents have received limited treatment by the courts; however, where a sham is carried to such an extent that it constitutes a charade upon the court, it could result in the exclusion of any evidence obtained. See United States v. Archer, supra. It has been necessary in the past for informants or Agents to be arrested along with other participants in the criminal activity. To date FBIHQ has not knowingly allowed our Agents to enter the judicial process, but we have removed them once

completing the booking process. The sham criminal process and arrest of undercover Agents and informants should not enter the judicial process unless the court has been previously apprised of the ruse before it takes place. This is to preclude perjured testimony which would, almost certainly, be viewed as violating the sanctity of the court.

5) Creation of undercover companies and the inherent risks that accompany such ventures must be closely monitored to insure that there is no unwarranted exposure to criminal and civil liability. If contracts are entered, the undercover company must be able to perform such contracts according to specifications. If informants or cooperative sources are assisting the undercover company, the Agents operating the company must have sufficient instruction on the law of agency. Such instruction is necessary to preclude the Bureau from being obligated because of the acts or omissions of informants or sources who exceed their authority, particularly, when they have been "clothed with apparent authority" to conduct business for the company. Any informant or source who has the authority to cause civil liability to be imposed upon the Bureau or has the authority to obligate funds of the FBI or undercover company, should have a personal service contract executed between himself and the Bureau spelling out the mutual duties and responsibilities of each. This contract should be forwarded to FBIHQ, Property Procurement and Management Section, Contract Review Unit. In some instances where the source or informant has little apparent authority, a contract may not be necessary, but a release might be obtained from the informant or source to the effect that the FBI or any Agent of the FBI will not be held responsibile for any debt or contractual liability arising from the business venture in question on account of acts or omissions by the source or informant. In addition to the abovementioned contract, the following transactions require submission to FBIHQ to be in conformity with the law and/or procurement regulations:

a) purchase of realty

b) leases or contracts which obligate the funds of the Bureau in excess of sixty days

c) indemnity agreements

Execution of contracts without Bureau authorization could be interpreted as exceeding the express authority of the Agent and could render any such contracts a nullity while exposing the Agent to personal liability. Moreover, receipt of funds from FBIHQ for the conduct of an undercover operation and exemption from certain statutes pursuant to Pub. L. No.95-624, (Department of Justice Appropriation Authorization Act, Fiscal Year 1979), do not authorize the field to execute leases or contracts in excess of 60 days without Bureau authorization.

Two recent cases which discuss the formation of FBI undercover companies are *United States* v. *Santoni*, 585 F.2d 667 (4th Cir. 1978) and *United States* v. *Gambino*, 566 F.2d 414 (2nd Cir. 1977) *cert. denied* 98 S.Ct. 1646 (1978). Both cases are very *instructive* on the creation of jurisdiction, entrapment, and requisite nexus with interstate commerce under the Hobbs Act.

6) *Utilization of existing company to support an undercover Agent* will be with or without the company's consent. In situations where the Agent is working with the company's consent, the role played by the Agent must be understood by the company to forestall claims at a later date that the Agent exceeded his authority or in some way caused injury to the company. In some instances, consideration should be given to executing a contract which defines the authority vested by a company in the Agent and mutual responsibilities and duties of each should be reflected therein. If pay is being received by the Agent, this payment may be handled as follows:

a) payment in cash which is immediately returned or after some prescribed period to the company;

b) payment by check which may be cashed and returned to the company or the actual check may be returned; and

c) because of bookkeeping problems or because of services rendered the company may not want a return of the salary. In this instance the money is forwarded to FBIHQ for deposit with the Treasury unless certification has been obtained pursuant to Pub. L. No. 95-624 to use income to offset expenses. (Refer to airtel to SAC, Albany and all offices, dated 11/21/78, captioned "Undercover Activities, Criminal Matters; Foreign Counterintelligence; Foreign Intelligence.")

When the cooperative company is small, regional, and involved in a highly competitive industry, Agents must insure that claims will not be made, if subsequently discovered, that the Government gave the cooperative company an unfair competitive advantage. This can usually be resolved by the Agent becoming an independent contractor who will be paid a fair sum for whatever he produces. Such a situation would not seem to exist where there are many non-Government employees working for the cooperative company.

When the company does not know that its prospective employee is an FBI Agent, the same potential for exposure to civil liability exists and this technique must be utilized only when fully justified and approved by FBIHQ.

7) False identification has been previously considered by Office of Legal Counsel (OLC), Department of Justice (DOJ). OLC has advised that the Bureau may properly use deception in certain circumstances where it is necessary to carry out the lawfully authorized functions of the Bureau, where controls are maintained to insure the deception is of the type which has been approved by the courts (e.g., the use of false identities). With regard to obtaining false identification from state agencies, OLC has taken the position that prior consultation with appropriate state officials would be desirable unless the need for secrecy does not permit such consultation in advance of the fabrication or use of identification documents. If this need for secrecy can be sufficiently articulated, our Agents may make application to the necessary state agency without divulging the FBI's involvement.

Obtaining false identification from Federal agencies has been viewed by OLC more restrictively. As a general rule, where the Federal agency, to whose employees a false statement or representation is made, is apprised of true facts surrounding the matter and consents, there is no prohibition in obtaining such false identification. However, if circumstances exist which preclude prior consultation with the Federal agency, FBIHQ authorization must be obtained before carrying out the deceptive practices. Such authorization should be requested when the undercover operation proposal is submitted--unless the need arises subsequent to the operation's approval. In the past, the necessity of apprising the Federal agency of the true facts has been handled on a case-by-case basis. Refer to airtel to SAC, Albany and all offices captioned "Undercover Activities, Use of Alias/False Identification," dated December 29, 1977. Furthermore, other guidelines concerning use of false identification are set forth in MIOG, Part II, Section 10-11.4.

8) Joint operations with local and state authorities was also addressed by OLC. By airtel to SAC, Albany and all offices captioned "Undercover Activities, Criminal Matters," dated December 2, 1977, a copy of a memorandum prepared by OLC was forwarded with a discussion regarding this matter. Basically, the memorandum provided that as long as there remains a legitimate basis for the view that the investigation of the underlying conduct may unearth violations of Federal law, the FBI is authorized to proceed with a joint investigation. However, the Bureau is precluded from investigations which concern violations of state law alone or searches or arrests for violations of state law. In situations where the abrupt withdrawal of the FBI from a cooperative investigation would result in a significant harm to individuals, OLC expressed the belief that the FBI would be justified in continuing its covert activity to the extent necessary in order to prevent this result. The OLC memorandum contained a discussion of "qualified official immunity" which should be analyzed by the PLA for future instruction to all Agents.

9) Sale of stolen property acquired during the course of an undercover operation has been requested on a limited basis by some offices. OLC has prepared a response to the Criminal Division of the DOJ concerning the propriety of and potential civil liability that may ensue from the sale of stolen property by the Bureau during the course of its investigations. In essence, OLC concluded that the sale of stolen property can never be a routine practice because to make such a routine practice could expose the individual Agent to personal liability for the value of the goods sold as well as incidental damages related thereto. Consequently, before an Agent considers the sale of stolen property, it is mandatory that FBIHQ authorization be obtained.

10) *Gifts of equipment from private sectors for use in undercover operations*: It is well settled that a Federal agency may *not* accept gifts or donations which would augment the agency's appropriations, absent specific statutory authority. 16 Comp. Gen. 911 (1937); 49 *id*. 572 (1970); 55 *id*. 1293 (1976). However, situations have arisen where private companies have solicited the cooperation of the FBI in recovering its property which had been stolen, or in which an interest had been assigned. In situations where the Bureau would be acting merely as the agent for the private company in getting back stolen property, Agents may properly accept funds to secure the property in question as long as none of the funds would be utilized for paying the administrative costs of the Bureau's operation. Moreover, under certain well defined situations and only with FBIHQ authorization, a lease or loan of equipment may be made to the FBI by the private sector.

11) *State criminal prosecution of Federal officers for acts committed in the line of duty* has created concern amongst some of our undercover Agents. *Clifton v. Cox*, 549 F.2d 722 (9th Cir. 1977); *In re McShane*, 235 F.Supp. 262 (N.D. Miss. 1964); and *United States v. Payner*, 434 F.Supp. 113 (N.D. Ohio 1977) are instructive for the proposition that where Federal officers violate state laws in the course of their official duties, and such officers can demonstrate a subjective belief that their conduct was necessary and proper under the circumstances, then they are immune from state prosecution. The court in *Payner*, *supra*, at 134, n.75, stated:

> "Evidently, the Supremacy Clause furnishes federal officers a broad, although perhaps not absolute, *see*, *United States ex rel. Drury v. Lewis*, 200 U.S. 1, 8, 26 S.Ct. 229, 50 L.Ed. 343 (1906), protection against state criminal prosecution when they violate state criminal laws while performing their duties."

A Federal officer may be subject to state criminal prosecution for acts committed while discharging his Federal duties when:

1) He employs means which he cannot honestly consider reasonable; or

2) He acts outside the scope of his authority; or

3) He acts out of malice or some other criminal intent.

The above discussion has equal application to undercover operations conducted pursuant to the Bureau's authority in the areas of foreign counterintelligence and foreign intelligence; therefore, each PLA should insure that Agents involved in any undercover operation are made aware of the legal restrictions and principles applicable to these operations. Inclusion of the PLA or Legal Advisor in the planning and supervision of an undercover operation should not be viewed a diminution in the role of the USA. It will remain necessary to have the full concurrence of the USA before any criminal undercover operation is undertaken. This concurrence is, of course, not necessary in the areas of foreign counterintelligence and foreign intelligence.

SAC, Albany
(Attn: Principal Legal Instructor)

~~March 30, 1977~~
April 4, 1977

Director, FBI

Informant Matters
Weatherford v. Bursey
Supreme Court Decision 2/22/77

Weatherford v. Bursey, 20 CrL 3059, decided by the Supreme Court on 2/22/77, addressed two issues of interest and importance to Bureau agents who utilize informants in the performance of their investigative responsibilities: 1) whether a defendant's Sixth Amendment right to the effective assistance of counsel is violated by the presence of a government informer at attorney-defendant strategy conferences, and 2) whether a defendant's right to a fair trial, guaranteed by the Due Process Clause of the Fourteenth Amendment (and Fifth Amendment in federal cases) is violated by withholding the identity of an informer until he appears as a trial witness for the prosecution.

In this case, Weatherford, the informer, was a codefendant and attended, by invitation, two meetings between the defendant Bursey and his attorney. Weatherford later became a surprise government witness at Bursey's criminal trial and a conviction ensued. In a subsequent civil suit Bursey alleged that Weatherford's presence at the attorney-client conferences constituted an automatic violation of his Sixth Amendment right. The Court rejected this contention and noted that such a per se rule would require informants who were invited to attend attorney-client conferences to refuse and thus, for all practical purposes, to unmask themselves. The effect would be to frustrate many necessary undercover operations.

The thrust of the Court's holding is that it takes something more than an informer's mere presence at an attorney-client conference to violate a defendant's right to the effective assistance of counsel. What that extra ingredient might be is speculative; however, dicta in the opinion is highly instructive. For instance, the Court found significance in the facts that the informer did not testify about any of the conversations between Bursey and his attorney, none of the government's evidence was a direct or indirect product of the

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LER:msg (138)

See Note Page 4.

[redacted]

overheard conversations, the conversations were not used in any way to Bursey's detriment, and no information concerning the defense trial strategy was conveyed to the prosecution.

Because it is not known what factors or combination of these or other factors will trigger a Sixth Amendment violation, adherence to the following will help avoid potential problems in this area:

A. Agents should instruct informants not to attend meetings between defendants and their attorneys. (It is important to note that the attorney-client intrusion in this case was unintentional in that Weatherford had been invited to attend the meeting and it was felt his refusal might jeopardize his informant status. It is likely that lower courts will distinguish this situation from one in which the prosecution intentionally, and without justification, inserts an informer into an attorney-client strategy conference. In the latter case, the government might be hard-pressed to convince a court that it had no purpose to intercept information about the defense and that it learned nothing about the defendant's strategy planning.)

B. If the informant must attend to prevent compromising his cover, he should be cautioned not to communicate to the agent anything learned from the meeting concerning the substance of defendant's conversations or the defense preparations, strategy, or plans.

C. If the informer does report on the meeting, resist any prosecution efforts to use the information, either directly or indirectly, to the defendant's substantial detriment.

Regarding the fair trial issue, Bursey claimed that withholding the informer-witness' true identity until the day of trial denied him the opportunity: 1) to consider whether plea bargaining might be the best course; 2) to do a background check on Weatherford for cross-examination purposes; and 3) to attempt to counter the devastating impact of eyewitness identity.

The Court rejected all three contentions, noting that: 1) there is no constitutional right to plea bargain; 2) the defense lawyer did not object to Weatherford's testimony or move for a continuance; and 3) the defendant's disadvantage was no greater than that which exists in any case where the government presents unanticipated, damaging evidence.

The opinion also noted that there is no constitutional right to discovery in a criminal case and that due process does not require the prosecution to reveal before trial the names of informants or other witnesses who will testify unfavorably to the defense. This is the general rule in most jurisdictions, unless modified by statute or court rule, and is justified in part by a desire to prevent intimidation of prosecution witnesses. Wright, Federal Practice and Procedure: Criminal 252 (1969). Nothing in Rule 16, Federal Rules of Criminal Procedure or the Jencks Act, 18 U.S.C.A. 3500 requires the prosecution to furnish a list of prospective witnesses to the defense. The only exceptions to these rules are found in 18 U.S.C.A. 3432, which obliges the prosecution to disclose its witnesses at least three days before trial in treason or other capital offense cases, and Rule 12.1(b) Federal Rules of Criminal Procedure, which imposes a duty, under certain circumstances, to furnish the defendant the names and addresses of witnesses who will rebut the defendant's alibi and establish his presence at the scene of the offense.

Nothing in the Weatherford decision conflicts with recent informant guidelines furnished by the Attorney General, see Buairtel to Albany, "Use of Informants, Attorney General Guidelines" dated 12/30/76. Current Bureau policy found in SAC Memoranda 34-76 (8/10/76) and 23-75 (5/27/75), the FBI Handbook Part I, page 19ff, and Volume IV, Manual of Instructions, Section 107, page 8, is substantially in accord with the Weatherford opinion. One exception appears in the criminal informant field where informants are to be advised to avoid becoming involved in strategy conferences with anyone "under criminal indictment." It is felt that a Sixth Amendment violation could occur prior to indictment, and possibly even prior to the initiation of formal prosecution (arrest, information) if an informer reported on the substance of an attorney-client conference held in contemplation of charges being filed. Accordingly, the instructions contained in this communication should be considered to apply to all phases of the investigation of a criminal offense.

This letter should be routed to all field legal instructors and its contents incorporated into the next regularly scheduled session of the uniform course of legal instruction. Handbook and manual changes forthcoming.

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

TO : SAC, Albany
(ATTN: Principal Legal Advisor)

DATE: 6-1-79

PERSONAL ATTENTION

FROM : Director, FBI

SUBJECT: UNDERCOVER ACTIVITIES,
DISCLOSURE OF INFORMANTS

During a recent SAC Conference at FBIHQ, concern was expressed that the identity of informants working on undercover operations might have to be divulged to defendants once prosecution is instituted. The Legal Counsel Division is aware of no reported appellate decision dealing with this problem in the context of a Bureau undercover operation. There have been, however, literally hundreds of cases in which the informant privilege was litigated in other contexts, most notably narcotics cases. The following summary of the law as developed in those cases is offered to assist you in your discussions of undercover activities with investigative personnel.

Prior to the Supreme Court's decision in Roviaro v. United States, 353 U.S. 53 (1957), the Government's privilege to refuse to disclose the identity of an informant was almost absolute. In Roviaro, however, the Court held that the privilege is limited by fundamental requirements of fairness. Thus, "where the disclosure of an informer's identity...is relevant and helpful to the defense of an accused, or is essential to a fair determination of a cause, the privilege must give way". Id. at 60, 61. Because the Court rejected a fixed rule with respect to disclosure, in favor of a balancing test, it is difficult to predict with certainty when the privilege must be waived. The public interest in protecting a flow of information about criminal conduct must be balanced against the individual's right to prepare his defense. Diverse holdings are often the result.

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Nevertheless, an examination of the factors which are commonly considered in the balancing test may give some insight into the problem. Many of these factors were identified recently by the Supreme Court of Colorado in People v. Marquez, 546 P.2d 482 (Colo. 1976). They are as follows: "(W)hether the informant was an eyewitness and earwitness to the criminal transaction and whether the informer himself is available or could, in the exercise of reasonable diligence, be made available; whether other witnesses to the transaction are in a position to testify; the likelihood that the testimony of the informer will vary significantly from that of other available or potentially available witnesses; whether the defendant himself knows the identity of the informant or could without undue effort discover his identity; whether the informant was deeply or peripherally involved in the criminal transaction." Id. at 485. Another important factor is the theory of the defense.

As a general rule, the courts have not required disclosure when the informant was merely an eyewitness or earwitness to the criminal transaction. See Nutter v. State, 262 A.2d 80 (Md. 1970). This is especially true if other eyewitnesses are available and there is no substantial conflict in their testimony. See United States v. Martinez, 487 F.2d 973 (10th Cir. 1973). Inasmuch as the availability of other witnesses could obviate the need for disclosure of the informer's identity, agents should be instructed to note the identities of all witnesses who are present during any criminal transaction observed by the informant.

Disclosure probabilities increase when an informant participates in the criminal enterprise. In this regard, some courts have drawn a distinction between cases in which the informer was a full participant in the criminal act, and those in which he was involved only in the preliminary stages of the case. For example, if the informant's role was limited to simply introducing government agents to potential defendants, and setting the stage for subsequent criminal transactions, disclosure frequently is denied, especially if the informer did not actually witness the criminal transaction. See United States v. Russ, 362 F.2d 843 (2d Cir. 1966), cert. denied 385 U.S. 923 (1966). And some have denied disclosure of an informant under these circumstances even though the informant did witness the criminal transaction, if the informant was not the sole witness. See State v. Sheffey, 243 N.W.2d 555 (Ia. 1976).

But when the informer is an actual party to the illegal act, disclosure is quite likely. See United States v. Williams, 488 F.2d 788 (10th Cir. 1973). This is especially true when the informer also helps arrange the criminal occurrence or the defense of entrapment is asserted. A precise, working definition of the term "participant" is difficult to construct. However, the reported cases seem to indicate that if the informer played a part in the very event with which the defendant is charged, and can testify directly concerning that transaction, he will be considered a participant. McLawhorn v. North Carolina, 484 F.2d 1 (4th Cir. 1973); United States v. Ruacho-Acuna, 440 F.2d 1199 (5th Cir. 1971). Again, mere physical presence at the scene of the offense usually is not sufficient to classify the informer a participant. See Miller v. United States, 273 F.2d 279 (5th Cir. 1959), cert. denied, 362 U.S. 928 (1960). And not surprisingly, most cases in which disclosure was ordered because of an informer's participation were matters which involved the purchase of contraband. See, e.g., Roviaro, supra (purchase of narcotics); United States v. Conforti, 200 F.2d 365 (7th Cir. 1952) (informer purchased counterfeit money). The relatively few informer-participant cases which have denied disclosure have adhered to a strict reading of Roviaro by requiring the informer to be the only participant in the criminal transaction. See State v. Taylor, 508 S.W.2d 506 (Mo. App. 1974) (informant and undercover officer purchased narcotics, disclosure denied. Roviaro distinguished on the ground the informant in Roviaro was the only witness and participant).

Although Roviaro can and has been read as requiring automatic disclosure of informants who participate in criminal transactions, some lower courts require defendants to show that an informant's testimony would be "relevant and helpful" to their defense before ordering disclosure. The value of an informant's testimony is thus balanced against the need for confidentiality. In order to tip the balance in favor of disclosure, most courts require defendants to carry the burden of demonstrating a need for the informant's testimony. This burden is more than mere speculation that an informant would be helpful. A factual basis must be shown "to establish that his demand does not have an improper motive and is not merely an angling in desperation for possible weaknesses in the prosecution's investigation". People v. Goggins, 313 N.E.2d 41, 44 (N.Y. 1974), cert. denied 419 U.S. 1012 (1974). See also Lannom v. United States, 381 F.2d 858 (9th Cir. 1968), cert. denied, 389 U.S. 1041 (1968). Frequently this factual showing takes place during an in camera examination of the informant or his file.

In the event a motion for disclosure is made by a defendant in a prosecution stemming from an undercover operation, the case agent should consider requesting the AUSA to move for an in-camera examination. Disclosure might be denied if the in camera judge determines that the participant-informer's possible testimony would be of no value to the accused's defense. In making this determination, it is likely the judge will consider the theory of the defense and the significance of the informer's testimony to that defense. See Roviaro, supra at 62. Defenses which would seem common to most undercover operations are the following: misidentification, entrapment, and due process claims.

The defense of misidentification would seem likely in undercover buying operations when the suspect is accused of having sold stolen goods to undercover agents or informants. In these cases, often an agent working undercover and an informant are involved jointly in setting the stage and making the buy. An important consideration affecting disclosure when the defendant claims misidentification is the amount of time the undercover agent was in the company of the alleged seller. As stated in United States v. Soles, 482 F.2d 105, 109 (2d Cir. 1973), cert. denied, 94 S. Ct. 455 (1973), "...where the undercover agent has been with the seller for substantial periods, it is highly unlikely that there has been any 'mistaken identification'..." The implication is that it is unnecessary to obtain the informer's testimony if the undercover agent can testify and make a certain identification. See also United States v. Davis, 487 F.2d 1249 (5th Cir. 1973).

In mistaken identity cakes where the undercover agent was with the seller only briefly, or was not in a good position to view his features, disclosure might still be avoided if the prosecution can show strong circumstantial evidence that the accused was, in fact, the seller. Examples would be to establish that the vehicle used in the transaction was registered to the defendant; the sale took place at the defendant's residence; the seller gave a telephone number later determined to be the defendant's; or the seller's description closely fits that of the defendant. Agents working in undercover capacities would be well advised to note these and similar factors which might later help establish circumstantially the suspect's identity.

Although successful entrapment defenses are less likely since the Supreme Court's decision in Hampton v. United States, 425 U.S. 484 (1976), it is probable that defendants will assert it frequently in undercover prosecutions. Because the acts which constitute entrapment often take place during private dealings between informants and defendants, an informant might be the only person in a position to prove or disprove entrapment. Under these circumstances, a disclosure order is a real possibility. But here again, the use of the in camera hearing could be of benefit. For example, in United States v. Rawlinson, 487 F.2d 5 (9th Cir. 1973), cert. denied 94 S. Ct. 1579 (1974), a drug defendant claimed he was entrapped by a Government informant and moved for an order disclosing the informant's identity. The motion was denied after the trial judge interviewed the informer in camera and determined the informer's testimony would not be helpful to the defense.

And at least one court has held that if the Government's proof strongly indicates that the defendant is predisposed to commit the crime, it is not error to deny disclosure even though "it is reasonably probable that the informer can give relevant testimony..." United States v. Eddings, 478 F.2d 67, 71 (6th Cir. 1973). Agents should thus be advised to note all facts and circumstances common to showing predisposition. (Previous informant reports of defendant's involvement in similar criminal activity, prior arrests or convictions for like crimes, defendant's willingness to participate in the criminal enterprise, etc.)

Another claim a defendant might make is that because of the outrageousness of the conduct of government agent and/or informant, or their overinvolvement in the criminal activity, it would violate fundamental concepts of fairness inherent in the Due Process Clause to allow the prosecution. Several cases have recognized this [illegible] "defense", see United States v. Corcione, 24 CrL [illegible] (2d Cir. 1979) and United States v. Archer, 4[illegible]6 F.2d [illegible] (2d Cir. 1973), and at least one court has suppressed evidence using this rationale. See United States v. Payner, 434 F.Supp. 113 (N.D. Ohio 1977). The success of a due process claim would appear to depend on establishing what the government agents did, and then convincing the court that that conduct was so egregious as to violate fundamental fairness. It seems likely, then, that a defendant would attempt to discover the identity of an informer who was involved in an undercover operation in order to use the informer as a witness in his attempt to prove that the Government's conduct was outrageous.

Although there are no known reported cases in which the informant privilege was raised in a due process context, it would seem likely that there would be no need for disclosure if the Government's activities could be established independently. Conceivably, this could be done through the testimony of the agents themselves or third party witnesses, or videotapes and audio recordings, if available. It also might be possible for the Government to stipulate to the facts and argue that as a matter of law the facts do not constitute a due process violation. In either event, the need for the informant's testimony would appear to be lessened significantly.

The preceding has been intended to be a general discussion of the factors which are important in determining whether a court will grant a defendant's motion for disclosure of an informant's identity. A related issue is the use of the informer as a witness for the Government. It can be anticipated that many important prosecutions stemming from undercover operations will require testimony from informants to assure convictions. In that regard, measures are available which permit utilization of informants as prosecution witnesses without divulging the informants' true identities and backgrounds. For a discussion of these measures see "The Informer-Witness" which appeared on page 29 of the May, 1977 issue of the Law Enforcement Bulletin.

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

Memorandum

File
Policy File [redacted]

O : SAC, Albany

DATE: 7/25/75

ROM : Director, FBI

ATTENTION: PRINCIPAL
LEGAL INSTRUCTOR

UBJECT: IDENTIFICATION AND PRESERVATION OF
TAPE RECORDINGS WHERE TITLE III,
P.L. 90-351 NOT APPLICABLE

A recent decision of the Third Circuit Court of Appeals raised questions concerning the identification and preservation of a tape used to record a conversation between the victim and subject in an extortion case. With his consent, the victim was equipped with a concealed tape recorder, which picked up incriminating statements of the subject. Since the interception was made with the consent of one of the parties, a court order under Title III, P.L. 90-351 (18 U.S.C. 2518) was not necessary.

The following instructions are furnished for your guidance in any cases not falling within the statutory requirements of Title III, P.L. 90-351 (hereinafter referred to as Title III) or under guidelines furnished by the Department of Justice in "Agent's Manual for Conduct of Electronic Surveillance Under Title III of Public Law 90-351" (hereinafter referred to as Agent's Handbook). The instructions would apply, for example, in investigations employing a "body recorder" or other monitoring device used with the consent of one of the parties to a conversation, such as the consensual recording of a telephone conversation.

Identification of Tape

The Manual of Instructions, Volume I, Section 8, Page 10, indicates that reel-type magnetic tape recordings which are to be preserved as evidence should be marked for identification (initials and date) by the receiving Agent on the reel itself and on the dull side of the loose end of the tape. This instruction continues in effect for those instances where a reel tape is used.

2 - Each Field Office (Attention: Principal Legal Instructor)

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Most frequently, a tape cassette will be employed. In such instances, it is impractical to mark the tape itself for identification, enclosed as it is in a plastic container. It is likewise undesirable, given the fragility of the tape, to remove it from the container for marking.

Accordingly, it is acceptable to mark for identification the plastic cassette itself with the initials of the receiving Agent and the date custody was taken.

Preservation of Tape

A more difficult problem exists with respect to safeguarding the tape pending its production at a pre-trial hearing or at the trial itself. Heretofore, it has been the practice of at least some offices to retain the original of such a tape in the bulky exhibit room of the field office with other physical evidence. While there is limited access to the bulky exhibit room, any Agent having an investigative interest in the tape may charge it out. Ordinarily no permanent record of the charge-out or the return of the tape is maintained. (See generally, Manual of Rules and Regulations, Part II, Section 3.)

In order to overcome any claim by the defense in a criminal prosecution that an original tape was changed or distorted in any way while in the custody of the field office, and to assure an unbroken chain of possession, the following guidelines should be followed in handling the tape:

1. If not done simultaneously with the original recording (duplicate original), a duplicate copy or copies should be made for investigative purposes. Agents may have unlimited access to such tapes if relevant to their investigations. Duplicates may be maintained in the case file (1A serial) or in the bulky exhibit room. They should be clearly marked as duplicates. Transcripts should be made from a duplicate.

2. After its use in making an additional tape or tapes, the original should be handled in the same secure manner as a tape preserved in a Title III investigation. See Agent's Manual, Part VI, pages 11-12. The original should be placed in a sealed envelope on which is written title and character of case, date tape received, source from whom received,

if appropriate, and the name of receiving Agent. In addition, information required in Agent's Manual, Part VI, Paragraph 3(a), 3(b) and 3(c) should be included. The sealed envelope should be retained in the limited access location presently used for Title III tapes (vault, safe, security-type fireproof file cabinet).

3. The chain of custody of the original should be maintained generally in accordance with Agent's Manual, Part VI, Paragraph 3 and 4. A permanent record must be made of all entries to the sealed envelope and any removal of the original tape from its repository and the return thereto.

4. If the original must be sent to the FBI Laboratory for reproduction or other analysis, instructions on the transmittal of physical evidence contained in Manual of Instructions, Volume I, Section 8, should be followed.

To summarize--because of the sensitive nature of tape recordings and their susceptibility to distortion, damage, or destruction, they should be handled differently than other physical evidence. Generally, preservation will follow guidelines set forth by the Department of Justice regarding maintenance of tapes acquired in the course of Title III electronic surveillances.

While there is an abundance of case law involving electronic surveillance, few decisions deal directly with the question of tapes and the chain of custody. Guidance on the retention, production and authentication of recording tapes may be found in U.S. v. McKeever, 169 F.Supp. 426 (S.D.N.Y. 1958), reversed on other grounds 271 F.2d 669 (2d Cir. 1959) and U.S. v. McMillan, 508 F.2d 101 (8th Cir. 1974) (approving formulation contained in McKeever). Also see U.S. v. Kohne, 358 F. Supp. 1053 (W.D. Pa. 1973) (Title III case; sealing of tape serves to establish chain of custody). For a general discussion of tape recordings as evidence, your attention is invited to 17 Am. Jur. Proof of Facts, pages 1-79, and Annotation, 10 L.Ed.2d 1169.

Please bring the foregoing to the attention of all investigative personnel and other field office employees responsible for the retention of physical evidence.

SAC, Albany August 4, 1976
(Attn: Principal Legal Instructor)

Director, FBI

USE OF INFORMANT TO CONDUCT SEARCH
OR SEIZURE OF DOCUMENTARY EVIDENCE

The attached memorandum, captioned as above, is furnished for your use in the field legal training program. It surveys the law concerning use of informants to carry out searches and seizures, responds to a series of hypothetical questions involving seizures of documentary evidence by informants, and considers other problems related thereto.

Employment of informants to assist in criminal investigations has long been approved by the courts. Yet use of third parties for search and seizure purposes does not insulate such activities from the reach of the Fourth Amendment. Similarly, undercover operations, while condoned by the law, do not diminish the constitutional protection afforded the person against whom the operation is directed. Special Agents should be instructed that careful control of informants and undercover operatives is essential if the Fourth Amendment is to be complied with. You are reminded that the enclosed document considers only applicable case law. Where more restrictive Bureau regulations exist in the Manual of Instructions or other communications to the field offices, they control.

Please assure that contents of the attached memorandum are brought to the attention of each agent at your next legal training conference.

Enclosure

2 - All field offices (Attn: Principal Legal Instructor)

DJM:msg (140)

[redacted] captioned as above. Letter to Albany and all offices, enclosing memo describing limitations on use of informants, and instructing that the contents be used for field legal training.

USE OF INFORMANT TO CONDUCT SEARCH OR SEIZURE OF DOCUMENTARY EVIDENCE

I. Search and Seizure by Informant - Exclusionary Rule

It is well-settled that evidence seized in violation of the right against unreasonable search and seizure is subject to exclusion. The Supreme Court held in Weeks v. U.S., 232 U.S. 383 (1914), that the warrantless search of defendant's house and the seizure of documents therein were a "direct violation of the constitutional rights of the defendant," that such evidence was inadmissible in a federal criminal prosecution and should have been returned to the owner. Thus was the "exclusionary rule" fashioned. The rule abrogated the common law principle that the admissibility of evidence is not affected by the manner in which it is obtained. It was made binding on state officers in Mapp v. Ohio, 367 U.S. 643 (1961).

The chief purpose of the Fourth Amendment exclusionary rule is deterrence of unlawful police conduct. Davis v. Mississippi, 394 U.S. 721 (1969); Kaufman v. U.S., 394 U.S. 217 (1969). Its origin and development clearly show it was intended as a restraint on acts of sovereign authority--to control the activities of governmental agents.

The principle of exclusion applies to any evidence seized in violation of the Fourth Amendment. The Amendment specifies that an individual is protected against unreasonable searches and seizures in his person, house, papers and effects. By its very terms the guarantee extends to documentary evidence. And the early cases--Weeks v. U.S., supra; Silverthorne Lumber Co. v. U.S., 251 U.S. 385 (1920); Gouled v. U.S., 255 U.S. 298 (1921)--all involve the application of the exclusionary rule to documentary evidence.

The notable exception to the exclusionary principle was formulated in Burdeau v. McDowell, 256 U.S. 465 (1921), and has never been overruled. Evidence seized illegally by a private person, as distinguished from a government officer, is not subject to exclusion. Today federal courts consistently apply this exception, and so long as there is no indication of government involvement, evidence seized by a private citizen, even through trespass, may be turned over to law enforcement officials for use in a criminal prosecution. U.S. v. Mekjian, 505 F.2d 1320 (5th Cir. 1975); U.S. v. Pryba, 502 F.2d 391 (D.C. Cir. 1974), cert. den. 419 U.S. 1127 (1975); U.S. v. Ogden, 485 F.2d 536 (9th Cir. 1973), cert. den. 416 U.S. 987 (1974).

Informants and undercover agents acting on behalf of and under control of law enforcement officers do not fall within the "private persons" exception to the exclusionary rule. The general principle has been stated as follows:

> "The corollary to the general rule recognizing admissibility of evidence in criminal cases obtained unlawfully by private persons is that where a government agent participates in a lawless private search or where the individual perpetrates a lawless search at the suggestion, order, or request of police such as to make him their agent, the evidence produced may be excluded as in derogation of the constitutional mandate against unreasonable searches and seizures by government action." 36 ALR 3rd 559 (also see cases cited Id. Sec. 9(a) at 590).

In short, an officer may not insulate himself from operation of the exclusionary rule by the simple expedient of recruiting an informant or undercover agent to do what he himself would be prohibited from doing. If an unlawful entry by an officer, i.e., burglary, trespass, would taint evidence discovered thereby, then such an entry by an informant acting under the officer's direction would likewise infect the evidence. Gouled v. U.S., supra, provides the illustration.

In Gouled, the defendant and another were suspected of conspiring to defraud the government. A business acquaintance of defendant, under direction of government officers, gained admission to defendant's office, and in his absence, conducted a warrantless seizure of documents which were delivered to the prosecutor and later introduced in evidence at trial. The Supreme Court held that the secret taking from a house or office of one suspected of crime, and in his absence, of a paper belonging to him, having evidential value only, by a representative of the government, violates the constitutional guarantee against unreasonable searches and seizures, whether entry to the house is obtained by stealth or through social acquaintance, or in the guise of a business call, and whether the owner be present or not at the time of entry. 255 U.S. at 305-306. See also Williamson v. U.S., 311 F.2d 441 (5th Cir. 1962) cert. den. 381 U.S. 950 (1965); People v. Fierro, 46 Cal. Rptr. 132 (Cal. App. 1965).

Whether the original documents seized are retained or returned after copies are made makes little difference as to the constitutionality of the seizure. In Silverthorne Lumber Co. v. U.S., supra, a "clean sweep of all books, papers, and documents" of defendant corporation was undertaken by federal officers "without a shadow of authority." Upon application to the district court, the original documents were returned, but only after photographs and copies were made. Justice Holmes, speaking for the Court, pointed out that knowledge gained by the government through an illegal seizure of documents cannot be used as the basis to later subpoena the original papers, which had been returned to the owners after copies were made.

To summarize: 1) The Fourth Amendment exclusionary rule bars the use in a criminal prosecution of evidence seized illegally 2) Documentary evidence is protected by the constitutional guarantee and is subject to exclusion; 3) The exclusionary rule operates to limit the actions of governmental officers; 4) Private citizens acting on their own are not controlled by the Fourth Amendment; 5) Informants and undercover operatives acting under direction of police or law enforcement officials are governmental officers for purposes of the exclusionary rule. Hence, informants are controlled by the same restrictions imposed on police or federal officers.

II. Hypothetical Questions

Having concluded in the foregoing discussion that informants are limited by the same rules applicable to law enforcement officers, the following analysis addresses more specific search-and seizure problems relating to informants:

> A. Has there been a lawful seizure where an informant, having access to premises by permission of a tenant, removes from a locked cabinet by picking the lock documents which are copied and returned without knowledge of the tenant?

Consent or permission to enter premises of another does not confer authority to conduct a search. Cunningham v. Heinze, 352 F.2d 1 (9th Cir. 1965), cert. den. 383 U.S. 968 (1966); State v. Peterson, 155 N.W. 2d 412 (Iowa 1968). Thus an informant, present by invitation of the owner or tenant, possesses no implied right to convert his lawful presence into a license to rummage through papers and effects of his host.

By any definition, an entry to a locked file cabinet in an effort to discover evidence is a search. The question, of course, is whether such a warrantless entry is reasonable. The Supreme Court has frequently held that any search conducted without warrant is per se unreasonable unless it falls within one of the well-recognized exceptions to the warrant requirement (e.g., consent searches, searches incident to arrest, hot pursuit entries, etc.) Coolidge v. New Hampshire, 403 U.S. 443 (1971); Vale v. Louisiana, 399 U.S. 30 (1970).

The thrust of Fourth Amendment protection was dramatically altered in 1967. In Katz v. U.S., 389 U.S. 347 (1967), the Court held that the Amendment protects people, not places, that the key to constitutional protection is whether a person harbors a reasonable expectation of privacy in the area of search. The property-trespass concept of the Fourth Amendment was abandoned in favor of a much broader approach designed to afford greater protection to a person's right of privacy. Yet even before Katz, courts regarded such areas as locked storage cabinets, Holzhey v. U.S., 223 F.2d 823 (5th Cir. 1955), and employee desks, U.S. v. Blok, 188 F.2d 1019 (D.C. Cir. 1951), safeguarded by the Fourth Amendment.

The Supreme Court in Mancusi v. DeForte, 392 U.S. 364 (1968), considered the standing of a union officer to challenge on Fourth Amendment grounds the legality of a warrantless search by state officers of a union office shared with other union officials. The state officers had entered the premises lawfully. The search yielded books and records admitted in evidence against him at trial. It is not clear from the record where the evidence was found or whether it was taken from a place reserved for defendant's exclusive use. Nonetheless, the Court held that defendant had requisite standing to object to the search; moreover, the search was found unreasonable.

Dictum in Mancusi v. DeForte is instructive. Justice Harlan noted that:

> "...if DeForte had occupied a 'private' office in the union headquarters, and union records had been seized from a desk or filing cabinet in that office, he would have had standing....DeForte would have been entitled to expect that....records would not be taken except with his permission or that of his union superiors.... This expectation was inevitably defeated by the entrance of state officials, their conduct of a general search, and their removal of records which were in DeForte's custody." 392 U.S. at 369.

It is thus fair to conclude that a trespassory entry by an FBI-directed informant, legally on the premises, to a locked file cabinet, would violate the constitutional rights of the lawful possessor of the cabinet and its contents. Evidence seized would be subject to exclusion.

B. Are the rights of an owner infringed where documents entrusted to an informant (i.e., informant has lawful possession) are instead turned over to the FBI for use as evidence?

In Hoffa v. U.S., 385 U.S. 293 (1966), it was stated: "Neither this Court nor any member of it has ever expressed the view that the Fourth Amendment protects a wrongdoer's misplaced belief that a person to whom he voluntarily confides his wrongdoing will not reveal it. Indeed the Court unanimously rejected that very contention in Lopez v. U.S., 373 U.S. 427 (1963)." 385 U.S. at 302.

This doctrine of "misplaced confidence" has been consistently sustained by the federal courts, and was in no way undermined by Katz v. U.S., supra. In U.S. v. White, 401 U.S. 745 (1971), the Court reaffirmed the reasoning of Hoffa:

> "...however strongly a defendant may trust an apparent colleague, his expectations in this respect are not protected by the Fourth Amendment when it turns out that the colleague is a government agent regularly communicating with the authorities...." 401 U.S. at 749.

Both Hoffa and White concern an undercover agent lawfully acquiring incriminating testimonial evidence from an unsuspecting defendant. A federal appellate court has applied the same reasoning to a suspect who voluntarily reveals incriminating physical evidence to an undercover agent who in turn discloses this fact to authorities. A defendant is not protected from the consequences of his error "if he places physical evidence in plain view of government agents." Thus a voluntary surrender of contraband narcotics to an undercover agent violates only the wrongdoer's misplaced confidence. In such a case, there is neither a search nor a seizure, and the evidence is lawfully possessed and its nature lawfully disclosed by the agent. U.S. v. Haden, 397 F.2d 460 (7th Cir. 1968), cert. den. 396 U.S. 1027 (1970). See also Brown v. Brierley, 438 F.2d 954 (3rd Cir. 1971), cert. den. 402 U.S. 997 (1971). While Brown does not involve an undercover operation, it nevertheless recognizes that guile and deceipt are often essential in criminal investigations, and points out that it is "constitutionally permissible for police to conduct criminal investigations without revealing their official status and their clandestine purposes." Hence, a revolver obtained from a murder suspect by deception was properly subjected to ballistics tests and later admitted in evidence. The "uncoerced relinquishment of the gun did not constitute an unreasonable search and seizure."

As to the second question, a defendant assumes the risk that physical evidence placed voluntarily in possession of an informant (undercover agent) will be made available for analysis or use by a law enforcement agency. An exception to this general proposition might exist where possession of a sealed package or envelope is given over to an undercover agent for delivery or safekeeping only. Circumstances in that event would strongly suggest the owner intended to retain a privacy interest in the contents. Such an expectation of privacy would prevent a warrantless entry to the package and examination of its contents.

C. May documents which are located on top of a desk *in open view* be lawfully seized by an FBI-directed informant for use by the government?

The question of a plain view seizure of evidence by an agent of government begins with an inquiry into whether or not an owner of documents retains a reasonable expectation of privacy in documents left in plain view on top of his desk. It has been held before and after the *Katz* decision that an individual possesses a constitutional right of privacy in the *contents* of a desk reserved for the exclusive use of that person. *U.S. v. Kahan*, 350 F. Supp 784 (S.D.N.Y. 1972), aff'd in part, rev'd in part 479 F.2d 290 (2nd Cir. 1973); *U.S. v. Blok*, *supra*. Whether this protection extends to papers located *on the desk* is a close question and one to which there is no simple answer. The Supreme Court pointed out in *Katz* that "what a person knowingly exposes to the public, even in his own...office, is not a subject of Fourth Amendment protection." 389 U.S. at 351. Therefore, a document left in plain view for all to see may not raise a constitutional issue at all. Whether or not it does would depend upon the facts and circumstances of the individual case (e.g., location of desk, conditions of employment, etc.).

Assuming that there is a "seizure" of the documents in plain view (i.e., the Fourth Amendment applies), the government is burdened with showing the reasonableness of its agent's action. If a search warrant has not been obtained beforehand, the seizure must be justified as an exception to the warrant requirement. One exception generally recognized is that of a "plain view seizure." When an officer is lawfully present and observes an item in open view which he reasonably believes is evidentiary, he may seize the item without a warrant. *Harris v. U.S.*, 390 U.S. 234 (1968). The discovery of the evidence, however, must be "inadvertent" or unanticipated. *Coolidge v. New Hampshire*, *supra*.

The essence of the "plain view doctrine" is the absence of a search for the items seized. If an officer gains entry to premises without warrant, by stealth or fraud, and then actively seeks out evidence, any evidence thus discovered will be subject to exclusion. Gouled v. U.S., supra at 305-306. But where there has been a lawful entry to premises U.S. v. Gargotto, 476 F.2d 1009 (6th Cir. 1973), cert. den. 44 L.Ed.2d 477 (1975) and there is probable cause to believe an article in plain view is evidence, U.S. v. Williams, 385 F. Supp. 1400 (D.Mich. 1974), and the discovery of the evidence is inadvertent, U.S. v. Cooks, 493 F.2d 668 (7th Cir. 1974), cert. den. 420 U.S. 996 (1975), its seizure is reasonable.

Justification for seizure of papers left open on a desk would be: 1) no reasonable expectation of privacy is invaded; or 2) a reasonable plain view seizure is made. The Supreme Court has not addressed the issue and without such guidance lower federal courts are likely to tailor their response to the factual pattern of the case presented.

D. Does the seizure by an informant of documents from a trash can in an office infringe the constitutional rights of the former possessor of the documents? What if the trash can is located outside the office?

An unlawful entry (e.g., burglary, trespass, etc.) would likely taint any evidence found in a business office pursuant thereto. See Gouled, supra. The assumption therefore is that the informant is properly on the premises when the trash can contents are seized.

The question involves the degree of privacy an individual retains in personal property he has discarded in a trash receptacle. Abandoned property is not protected by the Fourth Amendment. Abandonment has been defined as the intentional and voluntary relinquishment of the reasonable expectation of privacy in places or things. U.S. v. Kahan, supra. Whether property is abandoned is a question of fact. The general rule is once a former possessor has relinquished his privacy right he no longer has "standing" to object to its appropriation and examination by officers. U.S. v. Colbert, 474 F.2d 174 (5th Cir. 1973); Monteiro v. Howard, 334 F. Supp. 411 (D.R.I. 1971).

Abel v. U.S., 362 U.S. 217 (1960), has been cited frequently as the leading Supreme Court decision concerning abandonment. Following the arrest of Abel in his hotel room, he was permitted to prepare for departure by getting dressed and assembling his personal belongings. While doing so Abel discarded certain objects in the wastepaper basket. After he checked out of the hotel and was removed from the premises, FBI Agents searched the room and seized the contents of the wastebasket, later used in evidence. As to this seizure, the Court held that the property was lawfully obtained:

> "Nor was it unlawful to seize the entire contents of the wastepaper basket....So far as the record shows, petitioners had abandoned these articles. He had thrown them away. So far as he was concerned, they were bona vacantia. There can be nothing unlawful in the Government's appropriation of such abandoned property." 362 U.S. at 241.

Abel is the best authority for a warrantless seizure of abandoned trash within premises. Yet the continued viability of Abel is open to question since Katz v. U.S., supra, when the emphasis of Fourth Amendment protection shifted from property concepts to personal privacy. See Cook, Constitutional Rights of the Accused, Sec. 48 (1972).

In U.S. v. Kahan, supra, a post-Katz case considering among other issues the question of a warrantless office wastebasket search, the court held that: 1) an employee has a reasonable expectation of privacy in a wastebasket reserved for his use; 2) contents of a wastebasket are not "abandoned" in the constitutional sense; 3) an employee has a right to expect that papers consigned to the waste can will be disposed of or destroyed without prior inspection by others; 4) an employee has standing to object to a warrantless search of his wastebasket. Kahan, 350 F. Supp. at 795.

As pointed out above, abandonment is the intentional and voluntary relinquishment of the reasonable expectation of privacy. While the location of discarded trash is not the sole determinant of privacy, see U.S. v. Haruff, 352 F. Supp. 224 (E.D. Mich. 1972), nonetheless a much stronger argument for abandonment may be made where the trash or the receptacle is placed outside premises.

In a line of federal decisions, the courts have generally favored the view that a person who places a trash can outside a dwelling or business for collection retains no privacy interest in its contents. In U.S. v. Mustone, 469 F.2d 970 (1st Cir. 1972), it was held that trash bags left outside a business building on a sidewalk near garbage cans had been abandoned, as the former possessor renounced any reasonable expectation of privacy in the property. See also U.S. v. Jackson, 448 F.2d 963 (9th Cir. 1971), cert. den. 405 U.S. 924 (1972) (trash can contents in public area outside motel room not protected by Fourth Amendment); U.S. v. Dzialak, 441 F.2d 212 (2nd Cir. 1971), cert. den. 404 U.S. 883 (1971) (trash left on sidewalk in front of home; nothing unlawful in government's appropriation of such abandoned property); U.S. v. Stroble, 431 F.2d 1273 (6th Cir. 1970) (empty carton adjacent to curb not protected by Fourth Amendment); U.S. v. Wolfe, 375 F. Supp. 949 (E.D. Pa. 1974) (no constitutional protection in cartons left in back of business establishment); U.S. v. Haruff, supra (no expectation of privacy in community garbage containers placed at curb). It is noteworthy that all the foregoing cases were decided by federal courts in the years following the Katz decision. State courts are in disagreement. Compare, e.g., People v. Krivda, 486 P.2d 1262 (Cal. 1971), vac. 409 U.S. 33 (1972 (citizen retains expectation of privacy in trash) with Smith v. State, 510 P.2d 793 (Alaska 1973), cert. den. 414 U.S. 1086 (1973) (scope of constitutional protection does not extend to garbage placed in dumpster).

Placement of a wastebasket outside an office for collection or emptying factually parallels the trash can cases closely enough to permit a conclusion that such property, for Fourth Amendment purposes, has been abandoned. Hence either an officer or his informant may make a warrantless seizure of the property without violating constitutional rights.

E. May contents of envelopes given to an informant for mailing be removed, copied and returned before mailing?

The Supreme Court in 1878 held:

> "Letters and sealed packages...in the mail are as fully guarded from examination and inspection...as if they were retained by the parties forwarding them in their

> own domiciles. The constitutional guaranty of the right of the people to be secure in their papers against unreasonable searches and seizures extends to their papers, thus closed against inspection, wherever they may be...." Ex parte Jackson, 96 U.S. 727, 733 (1878).

Jackson makes clear that the Fourth Amendment protects mail from instrusions by postal employees, and further suggests that sealed papers, whether in the mails or not, enjoy similar protection. The question today is framed in terms of the Katz decision: Does a person retain a reasonable expectation of privacy in sealed documents given to an informant for mailing?

The answer to this question is not to be found in U.S. Postal Service regulations. The envelopes have not yet entered the mail system but rather are being delivered to the post office. The informant is not an agent of the postal system but rather an agent of the mailer. What controls is the intent (i.e., subjective expectation of privacy) of the party mailing the envelope, and the limitations, expressed or implied, imposed on the informant. If it is understood between the parties that the informant is free to remove and examine the contents, then the mailer assumes the risk of disclosure. On the other hand, where the informant has bare possession of the envelope for the sole purpose of mailing, an entry to the envelope violates the mailer's Fourth Amendment intere The sealing of the envelope would be a highly persuasive factor in arguing the contents of the envelope were private and secret.

III. Related Problems: Criminal, Civil, Constitutional, and Evidentiary

A. Criminal Liability

A discussion of an informant's role in conducting a search or seizure would not be complete without mention of the potential criminal liability facing an undercover agent who burglarizes a home or business, forces open a safe or file cabinet, and steals documents contained therein. Such activity violates the criminal code of every jurisdiction in the United States. That he is recruited and controlled by a government principal or that he is motivated by a desire to assist law enforcement authorities would not be valid defenses to a criminal charge.

The criminal liability of an undercover agent may extend to his principal. For example, the Federal Criminal Code provides:

> "Whoever commits an offense against the United States or aids, abets, counsels, commands, induces, or procures its commission, is punishable as a principal. Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal." 18 U.S.C. § 2, as amended (1951).

Thus, a federal officer who recruits an agent and participates in the planning or execution of an illegal entry or theft would be liable as a principal. Moreover, even though the principal has no hand in planning or execution, he nevertheless could be charged with "misprision of felony" (18 U.S.C. § 5) if he later learns of his informant's criminal act and conceals this information. Finally, a federal officer, together with his undercover agent, may be guilty of violating a conspiracy staute even if the burglary or theft is never actually carried out.

B. Civil Liability

In addition to possible criminal liability, both a federal officer and his undercover agent might find themselves defendants in a civil suit. Such an action could be brought in state court for the common law torts of trespass, conversion, or invasion of privacy, or in federal court for a violation of constitutional rights (the so-called "constitutional tort," Bivens v. Six Unknown Named Agents, 403 U.S. 388-1971). If a federal officer directs, ratifies or participates in tortious conduct, he may be held directly accountable, along with the undercover agent.

C. Fifth Amendment

With respect to the seizure of documentary evidence by informants, there is another constitutional problem--the Fifth Amendment. This consideration is separate and distinct from any Fourth Amendment search and seizure claim. It has been argued that certain documentary evidence cannot be used in a criminal prosecution regardless of the manner in which it is obtained. For example, a diary or private papers. The Supreme Court took note of this category of evidence in Warden v. Hayden, 387 U.S. 294 (1967). Introduction of certain "testimonial" or "communicative" evidence may compel a person to become a witness against himself in violation of the Fifth Amendment. There are "items of evidential value whose very nature precludes them from being the object of a reasonable search and seizure." 387 U.S. at 303. More recently, however, the Court has substantially narrowed, if not abolished, the Fifth Amendment as a protection against the taking of private papers which are evidentiary, so long as the Fourth Amendment is satisfied, i.e., such papers are produced by a reasonable search and seizure. See Andresen v. Maryland, 19 Cr.L. 3183 (6/30/76) (seizure of attorney's personal business records under valid search warrant and their subsequent introduction into evidence do not violate the Fifth Amendment proscription against compulsory self-incrimination); Fisher v. U.S., 48 L.Ed.2d 39 (1976) (the Fifth Amendment privilege protects against compelled testimony, not the disclosure of private information; the privilege is not violated by a summons directed to defendant's attorney ordering production of defendant's income tax records previously turned over to the attorney to assist in an investigation).

D. Privilege

Notwithstanding compliance with the Fourth Amendment search and seizure requirements, an evidentiary privilege may be asserted to bar use of documentary evidence, otherwise relevant, in a criminal prosecution. Where documents seized lawfully or unlawfully are private communications made between lawyer and client pursuant to professional consultation, a privilege may be claimed in all jurisdictions. Similarly, it is widely recognized that confidential communications between husband and wife and between doctor and patient may be excluded where the privilege is asserted. Thus, apart from the entry or seizure problems inherent in the use of an undercover informant, certain documents may be inadmissible on evidentiary privilege grounds alone. See, generally, McCormick, Evidence §§78-105.

PERSONAL ATTENTION
MEMORANDUM 53-79

UNITED STATES DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D.C. 20535

November 13, 1979

File
Policy Folder

MEMORANDUM TO ALL SPECIAL AGENTS IN CHARGE:

(A) USE OF CONSENSUAL MONITORING DEVICES -- Previously, in using consensual monitoring devices, one of the parties to the conversation had to give written consent to FBI Agents to monitor the conversation. This policy is herewith being modified as follows:

Agents should continue to obtain written consent, as documented by an executed form FD-472, whenever possible; however, oral consent will be acceptable in those instances where the consenting party declines to give written consent. When oral consent is obtained, at least two Agents should be present to witness this consent, and the fact that the consenting party has declined to give written consent should be recorded on the FD-472. This form should then be executed in all respects with the exception of the consenting party's signature.

Manual changes will follow.

William H. Webster
Director

11-13-79
MEMORANDUM 53-79

SAC, Albany

February 9, 1979

[redacted]

Director, FBI

[redacted]

UNIFORM COURSE OF LEGAL INSTRUCTION
FOR ALL FIELD OFFICES

Reference is made to SAC Memo 52-74, dated 11-5-74, which established the Uniform Course of Legal Instruction, and letter to SAC, Albany, Attention: Principal Legal Advisor, captioned as above, and dated 11-14-78.

Recent field office inspections have disclosed that there is perhaps some misunderstanding of what is required under the Uniform Course of Legal Instruction. The Uniform Course is required in each office, and attendance of each Agent is mandatory. A record of attendance is to be maintained, and make-up sessions held for those unable to participate for some legitimate reason.

Regular and effective legal training is critical if this Bureau is to meet its responsibilities within the law. Since the ultimate objective of a criminal investigation is to obtain facts that result in a successful prosecution, it is essential that Agents be aware of complexities and changes in the law that affect the gathering and admissibility of evidence.

MAILED 16
FEB 13 1979
FBI

In the past few years, civil suits against Agents, growing out of investigative procedures, have increased greatly. Such litigation is expensive, time-consuming, and debilitating to the credibility and morale of the Bureau.

2 - Each Field Office

DJM:dlr:bpr
(135)

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Sec'y

MAIL ROOM ☐

LEG : MAD

Continued - Over

FBI/DOJ

Letter to Albany
RE: Uniform Course of Legal Instruction
for all Field Offices

Legal training will not discourage all lawsuits. But it is an effort to assure the FBI functions in accordance with the rule of law, while at the same time protecting the individual Agent and his superiors. I do not intend it to be a pro forma exercise. Each Special Agent in Charge is responsible to make certain that: (1) the mandatory legal training is presented; (2) each Special Agent attends such training; and (3) the results of the training are accurately reported to FBIHQ. You are reminded that the annual report of legal instruction is to be furnished by September 30 of each year. See Manual of Administrative Operations and Procedures, Part II, Section 4-1.

I have asked the Planning and Inspection Division to carefully monitor the Uniform Course of Legal Instruction during field office inspections.

NOTE: Suits against Agents have increased from 18 in 1972 to 72 in 1977. Letter to all SACs emphasizes need for full support of field legal training. Planning and Inspection Division asked to carefully monitor the program.

APPROVED:

Director
Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.

Adm. Serv.
Crim. Inv.
Ident.
Intell.
Laboratory

Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training KEP
Public Affs. Off.

UNITED STATES GOVERNMENT

Memorandum

UNITED STATES DEPARTMENT OF JUSTICE
FEDERAL BUREAU OF INVESTIGATION

TO : SAC, Albany

DATE: 11/14/78

ATTENTION: Principal Legal Advisor

FROM WHW Director, FBI

SUBJECT: UNIFORM COURSE OF LEGAL INSTRUCTION
FOR ALL FIELD OFFICES

The following revision has been approved by Legal Counsel Division for the basic 16 hours unit course of legal instruction in order that the Principal Legal Advisor (PLA) will have more flexibility in meeting the specific needs within his field office.

The duration of the course will remain 16 hours annually and the 16 topics listed in SAC Memo 52-74, dated 11/5/74, will continue as part of the mandatory legal training program. However, each PLA is now authorized to fashion his instruction to the needs of his particular field office by determining the length of time allowed to each of the 16 topics.

For example, the PLA can decide upon a two-hour program in the area of search of persons and afford less time regarding laws of evidence or entrapment. In future annual reports on Field Legal Instruction, each PLA will specify how much time has been spent on each topic, insuring that each topic is afforded at least a minimum basic review.

2 - Each Field Office

Buy U.S. Savings Bonds Regularly on the Payroll Savings Plan

11/5/94

(B) UNIFORM COURSE OF LEGAL INSTRUCTION FOR FIELD OFFICES --
Recognizing the legal difficulties that often arise during major investigations, it is necessary that there be continuing and improved legal training provided in each field office. Accordingly, I have approved the following uniform course of legal instruction that must be provided to all investigative personnel: (Amending instructions as set forth in SAC Letters 67-43 (B), 68-7 (A), and 69-20 (B).)

Law of Arrest	1 hour
Probable Cause	1 hour
Investigative Detention	1 hour
Search of Persons	1 hour
Search of Premises	1 hour
Affidavits/Complaints	1 hour
Search of Motor Vehicles	1 hour
Interrogation	1 hour
Eyewitness Identification	1 hour
Electronic Interception	1 hour
Civil Liability	1 hour
Informants	1 hour
Entrapment	1 hour
Juveniles	1 hour
Federal Rules of Criminal Procedure	1 hour
Law of Evidence (Traditional Rules such as hearsay, privileges, best evidence)	1 hour

This sixteen-hour uniform course of field legal instruction is a minimum legal training requirement for all investigative personnel. The one-hour lecture time provided for each of the above topics is a minimum period. The lectures on these topics should not be combined but must be thorough and given as separate subjects. Obviously, additional legal instruction on the above subjects or other topics will be afforded as the need arises.

It must be emphasized that the sixteen-hour legal instruction program outlined above is a minimum uniform course. Topics included in the uniform course are of a general nature that all FBI investigative personnel must know whatever their specialized assignments may be. It must be augmented to meet the particular legal training needs of individual squads or situations arising within a field office.

The most desirable scheduling of instruction would be for each Agent to attend eight two-hour sessions scheduled over the fiscal year. This scheduling is not mandatory and in particular, the best method of providing this uniform course of instruction to resident agency personnel is most practicably left to the discretion of the field offices.

In order to provide the legal instructors with resource material the following bibliography of legal materials is recommended:

McCormick on Evidence - Second Edition (Hornbook Series) (1972) West Publishing Company, St. Paul, Minnesota 55102.

Black's Law Dictionary - Revised Fourth Edition - West Publishing Company, St. Paul, Minnesota 55102.

Proposed Rules of Evidence for United States Courts and Magistrates - West Publishing Company.

Uniform Rules of Evidence Approved by the American Bar Association at its Meeting at Boston, Massachusetts, August 28, 1953 - National Conference of Commissioners on Uniform State Laws, 1155 East Sixtieth Street, Chicago, Illinois.

Criminal Law - (Hornbook Series) (1972) La Fave - West Publishing Company, St. Paul, Minnesota 55102.

Scientific Evidence in Criminal Cases (1973) by Moenssens, Moses and Inbau - Foundation Press Inc., Mineola, New York.

Criminal Procedure in a Nutshell - Israel and La Fave - West Publishing Company (1971).

Search and Seizure - (with supplement) Edward C. Fisher - Traffic Institute, Northwestern University, Evanston, Illinois (1970).

11-5-74
MEMORANDUM 52-74

Arrest - Wayne R. La Fave - Little, Brown and Company (1965).

In addition to the above bibliography, Legal Counsel Division will provide monographs and other materials on various legal topics.

The uniform legal training program should be given throughout each fiscal year to investigative personnel during eight two-hour sessions in order to provide continuity and to minimize the interruption of investigative activity.

Annually, advise the Bureau, Attention: Legal Counsel Division, by letter to be submitted by June 30 of the total legal instruction given to FBI investigative personnel during the fiscal year. Show in this letter the topic, length of instruction, name of instructor, and number of Agent attendees at each lecture. The same letter must also provide an explanation regarding the action that is being taken to correct any delinquencies. The initial letter should reach the Bureau by June 30, 1975.

Manual changes follow.

ENCLOSURE in response to
Question #10, your letter
dated 10/5/82

2dFEB78 01 06z
RECEIVED
FEDERAL BUREAU
OF INVESTIGATION
COMMUNICATIONS SECTION

296

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Serv.
Crim. Inv.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Sec'y

[redacted]

[redacted]

[redacted]

[redacted]

FM NEW YORK [redacted] (P)

TO DIRECTOR [redacted] ROUTINE

BT

~~CONF INFT NY 6774-C~~ ([illegible] 3/24/78)

CAPTIONED SOURCE FURNISHED VALUABLE INFORMATION IN CONNECTION WITH CASE ENTITLED "DOMONIC CASAREALE; ITSP; NEW YORK [redacted] THE INFORMATION SUPPLIED LED TO THE RECOVERY OF TWO PAINTINGS WORTH ONE MILLION DOLLARS AND THE ARRESTS OF TWO SUBJECTS WITHOUT INCIDENT.

FOR INFORMATION OF BUREAU, SOURCE PROSECUTED BY WESTERN DISTRICT OF PENNSYLVANIA IN THE CASE ENTITLED "MELVIN WEINBERG; BDA; LONDON INVESTORS, LTD; ITSP; PENNSYLVANIA [redacted] NY[redacted] SOURCE SENTENCED TO THREE YEARS PROBATION [redacted] -9 JANUARY 23, 1978. USDC JUDGE WILLIAM KNOX, WDP, ALLOWED SOURCE [redacted] TO CONSORT WITH PAST ASSOCIATES WITHOUT VIOLATION OF PROBATION IF SUCH ACTIVITY IS CONDUCTED WITH CONSENT OF THE FBI.

NEW YORK WILL SUBMIT RECOMMONDATION FOR LUMP SUM AWARD

EX-120 REC-92

FEB 27 1978

50 C MAR 7 1978

EJ

FOR SOURCE BY SEPARATE COMMUNICATION. NEW YORK REACTIVATING SOURCE AS CI.

BT

ENCLOSURE in response to Question #11, your letter dated 10/5/82

FD-36 (Rev. 5-22-64)

FBI

Date: 12/22/78

Transmit the following in ____________ (Type in plaintext or code)

Via AIRTEL ____________ (Priority)

TO: DIRECTOR, FBI
(ATT: SELECTIVE OPERATIONS UNIT)

FROM: SAC, BROOKLYN-QUEENS [redacted]

SUBJECT: ABSCAM
ITSP
(OO:BQ)

Retelcal of SSRA JOHN F. GOOD, Hauppauge RA, to Supervisor JOHN CHADWICK, this date.

In connection with an ongoing undercover operation it is requested that a stop be placed with the Identification Division regarding the following SAs who are involved in the operation and that if any inquiry is received by the Identification Division concerning these SAs, that the Hauppauge RA of the BQ Office be immediately notified.

Set forth below are the names of the SAs, along with their undercover identities:

JOHN M. MC CARTHY	John M. Mc Cloud
MYRON R. FULLER	Myron Wagner
EDWARD P. WOODS	Edward Thomas
MARGOT P. DENNEDY	Margaret Kennedy
BRUCE E. BRADY	Bruce Bradley
THOMAS MC SHANE	Thomas Bishop.

EX-114 [redacted] 79X

3-19-79

3-Bureau
(1-SOU Unit)
2-New York

[redacted]

JPC: [redacted]
(6)

[redacted]

NYO551 3480155

PP HQ

14 DEC 78 02 06z

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P 0130153Z DEC 78

FM BROOKLYN-QUEENS [redacted]

TO DIRECTOR PRIORITY

ATTN: TRANSPORTATION CRIME UNIT - CID, ROOM 5042, JEH BUILDING.

HAND CARRY TO ROOM 5042, JEH BUILDING.

BT

UNCLAS E F T O

ABSCAM; ITSP (OO:NEW YORK).

RE NEW YORK AIRTEL, DECEMBER 9, 1978, AND BUREAU TELCALL TO NEW YORK BY SUPERVISOR WILLIAM REILLY, DECEMBER 11, 1978.

IN ADDITION TO INFORMATION SET FORTH IN REFERENCED NEW YORK AIRTEL, IT IS TO BE NOTED THAT ON AUGUST 21, 1978, $500,000.00 WAS DEPOSITED IN THE CHASE MANHATTAN BANK, [redacted] PARK AVENUE, NEW YORK, NEW YORK. THIS AMOUNT IS DIVIDED INTO FIVE SEPARATE SAVINGS ACCOUNTS IN THE AMOUNT OF $100,000.00 EACH. ACCOUNTS ARE IN THE NAME OF KAMBIR

Assoc. Dir.
Dep. AD Adm.
Dep. AD Inv.
Asst. Dir.:
Adm. Servs.
Crim. Inv.
Ident.
Intell.
Laboratory
Legal Coun.
Plan. & Insp.
Rec. Mgnt.
Tech. Servs.
Training
Public Affs. Off.
Telephone Rm.
Director's Sec'y

Reilly

Schwarz

EX-109

REC-16

74

DEC 15 1978

DEC 13

79 DEC 21 1978

ABDUL RAHMAN, THE FICTIONAL PRINCIPAL OF ABDUL ENTERPRISES LIMITED. THE MONEY IS FOR THE SOLE PURPOSE OF ESTABLISHING THE FINANCIAL CREDIBILITY OF ABDUL ENTERPRISES LIMITED.

BT

FD-36 (Rev. 5-22-64)

FBI

Date: 12/11/78

Transmit the following in ______________________
(Type in plaintext or code)

Via AIRTEL ______________________
(Priority)

56

TO: DIRECTOR, FBI
(ATT: TRANSPORTATION CRIMES UNIT,
CID, ROOM 5042, JEH)

FROM: SAC, BROOKLYN-QUEENS [redacted]

SUBJECT: ABSCAM
ITSP
(OO:BQ)

"HAND CARRY TO ROOM 5042, JEH".

Enclosed for the Bureau is a copy of a summons and complaint and a notice to take deposition served on SA JOHN M. MC CARTHY on 12/11/78 in his capacity as a principal of Abdul Enterprises.

AUSA JOHN JACOBS, EDNY, was similarly served on 12/7/78. JACOBS has advised that sealed affadavits will be prepared requesting dismissal of action and submitted to Chief Justice JACOB MISHLER, EDNY.

The Bureau will be kept advised of all developments in this matter.

ST 114 REC-[redacted] 28X

ENCLOSURE

FEB 15 1979

③-Bureau (Enc. 2)
(1-Transportation Crimes Unit,
CID, Room 5042, JEH)
2-New York

JFC:men
(6)

1cc Rm 5012 TCU

1cc [illegible] 5320

[redacted]

[redacted]

[redacted]

FBI

Date: 12/5/78

Transmit the following in ______________________
(Type in plaintext or code)

A I R T EL

Via ______________________
(Priority)

TO: DIRECTOR, FBI
(ATT: TRANSPORTATION CRIMES UNIT,
CID, ROOM 5042, JEH"

FROM: SAC, BROOKLYN-QUEENS [redacted]

SUBJECT: ABSCAM
ITSP
(OO:BQ)

"HAND CARRY TO ROOM 5042, JEH".

ReBuairtel to all offices, dated 11/21/78, captioned, "Undercover Activities - Criminal Matters; Foreign Counterintelligence; Foreign Intelligence".

Per instructions contained in referenced airtel, the following information is being provided regarding an undercover operation being conducted by this office.

Name and Address of Undercover Company - Abdul Enterprises, Ltd.
4250 Veterans Memorial Highway
Holbrook, New York, 11741.

REC-115 [redacted] 78

Office space at the above location is being rented under the terms of a three year lease, effective 10/1/78. The lease includes an option to cancel the lease within 12 months after 10/1/78 without penalty. The lease requires monthly rental fee of $600 and a two month rental ($1200.00) as a security deposit.

ENCLOSURE

6 DEC 27 1978

[redacted]

3-Bureau
(1-Transportation Crimes Unit,
CID, Room 5042, JEH)
2-New York

JFC:men
(6)

Approved: ______________ Sent ______________ Per ______________
Special Agent in Charge

7 5 JAN 05 1979

[redacted]

Abdul Enterprises maintains a regular checking account with the Long Island Trust Company, Franklin Avenue, Garden City, New York.

Riley certification

Return to Clywick 5153

ABSCAM

September 16, 1978 - October 31, 1978

1. Group I
2. White Collar Crime
3. [redacted]
4. Bureau file number ______________.
5. FBI operation
6. Funding

	Current Month	Totals to Date
a. FBI funds authorized [redacted]	$10,000.00	$40,000.00
b. FBI funds expended (vouchered) [redacted]	8,505.89	16,658.19
[redacted]		
d. LEAA funds authorized	None	None
e. LEAA funds expended	None	None

7. Accomplishments: (cumulative)

	Arrests	Convictions	Recoveries/ Savings	Economic Loss Prevented
a. FBI	4			$200,000,00
b. Local				
c. Other Federal				

8. Manpower Utilized

	UCAs	Support Agents	Clerical Support
(Number of Personnel)	4	2	0

. . .

9. Narrative Summary

Specific accomplishments are as follows:

1) Contact with Sam Goldstein and Sol Stitch, who arranged for a trip to Las Vegas, Nevada in September 1978 where ABSCAM principals commenced preliminary negotiations with Detroit and St. Louis factions for the purchase of the Alladin Hotel.

2) Continued negotiations with Ed Linick, William Bell, Jack Morris and Don Eacret, which resulted in their arrest on October 4, 1978 at Flushing, New York for uttering false and fraudulent obligations of a foreign bank. Also, $200,000,000 in Certificates of Deposit (CDs) were recovered.

3) Contact with Harry Sokoloff of Miami, Florida on October 9, 1978 when Sokoloff offered ABSCAM 3½ million dollars worth of stolen securities for $.10 on the dollar. To show good faith, Sokoloff produced National Airlines stock and a City of Reading bond, which have been positively identified as part of loot taken from the Bradford Trust Company, New York City, in 1978.

4) Contact with Bruce Tingle, Newport News, Virginia, who introduced ABSCAM to a Don Eaton of Hampton, Virginia through whom four counterfeit paintings by the "Old Masters" were located in the vault of the Dutch Bank, New York City.

5) Contact with Sol Kaye, Hallendale, Florida, which resulted in the identification and photography of two Renoir paintings stolen from a collection located in Chicago, Illinois.

10. Expense Itemization

There follows an itemized listing of expenses incurred in connection with the ABSCAM investigative matter during the period September 16, 1978 to October 31, 1978.

	Date	Payee	Amount
1.	September 22, 1978	Travel Expenses (net) (Las Vegas, Nevada trip)	$ 797.00
2.	September 26, 1978	Furniture and furnishing for apartment - purchases from various stores, including Macy's, A & S, and Sears	930.38
3.	October 2, 1978	Mel Weinberg (Payment for expenses and services)	1000.00
4.	October 3, 1978	Miscellaneous - Sundry Expense (Luggage needed for buy of counterfeit CDs)	139.05
5.	October 5, 1978	Petty Cash Expense (Stamps)	15.00
6.	October 6, 1978	Mel Weinberg (Payment for expenses and services)	1000.00
7.	October 6, 1978	Villa At the Pines (apartment rental)	320.00
8.	October 6, 1978	Mac Arthur Associates (business space rental)	600.00
9.	October 6, 1978	New York Telephone (business telephone)	532.55

	Date	Payee	Amount
10.	October 13, 1978	J.J.M. Maintenance Corporation (automobile rental)	$ 523.41
11.	October 13, 1978	New York Telephone (apartment telephone)	87.06
12.	October 24, 1978	Petty Cash Expense	5.90
13.	October 27, 1978	New York Telephone (business telephone)	14.70
14.	October 27, 1978	New York Telephone (business telephone)	185.66
15.	October 27, 1978	Long Island Lighting Company (utilities, electric bill)	35.21
16.	October 27, 1978	Villa At the Pines (apartment rental)	320.00
17.	October 27, 1978	New York Telephone (business telephone)	1884.86
18.	October 27, 1978	Carte Blanche (Entertainment expenses)	115.11
			$8505.89

Expenditure Breakdown:

Period Expenses (September 16-October 31, 1978)	$7575.51
Asset Purchases (furniture)	930.38
Total Expenditures	$8505.89

It should be noted that the following rental security deposits are currently committed. They are considered assets of ABDUL Enterprises, Ltd. and therefore, are not reflected in the foregoing expenditure breakdown:

Mac Arthur Associates	$1200.00
Villa At the Pines	640.00
J.J.M. Maintenance Corporation	500.00
Total Rental Security Deposits	$2340.00

FD-36 (Rev. 5-22-64)

FBI

Date: 12/4/78

Transmit the following in ________ (Type in plaintext or code)

Via AIRTEL ________ (Priority)

TO: DIRECTOR, FBI
(ATT: TRANSPORTATION CRIMES UNIT
CID, ROOM 5042, JEH)

FROM: SAC, BROOKLYN-QUEENS [redacted]

[redacted]

[redacted]

SUBJECT: ABSCAM
ITSP
(OO:BQ)

[redacted]

SAUL J. COOPER; BEN
COHEN; MATTHEW RENDA,
dba INTERNATIONAL BANK
OF THE CITY OF LONDON,
GRAND TURK, BWI;
ITSP-FBW
(OO:MM)

[redacted]

JAMES TAMER, aka;
ET AL
RICO
(OO:DETROIT)

[redacted]

REC [redacted] 75

[redacted]

"HAND CARRY TO ROOM 5042, JEH".

Re Detroit tel to the Director, 11/9/78.

22 DEC 15 1978

RECEIVED

③-Bureau
(1-Transportation Crimes Unit)
2-Detroit [redacted] (Enc. 2)
2-Las Vegas [redacted] (Enc. 4)
2-Miami [redacted] (INFO)
2-New York

[redacted]

16

SJX

JFC:men
(12)

[redacted]

Enclosed for Las Vegas are two copies and for Detroit one copy of a tape of conversation between SA JOHN M. MC CARTHY and RICK WYNN, a Miami attorney, concerning the sale of Alladin Hotel.

Also enclosed for Las Vegas are two copies and for Detroit one copy of a tape of conversation among RICK WYNN, BEN COHEN and SAs JOHN M. MC CARTHY, MYRON FULLER and THOMAS MC SHANE.

The extra copy of these tapes are furnished to Las Vegas for use of AUSA STAN HUNTERTON, who is prosecuting this matter.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

As set forth in enclosed tapes, the ABSCAM principals have obtained all possible information regarding the sale of the Alladin hotel and in the future will not be in a position to obtain any additional information.

New York requests that it be kept advised of any action taken against WYNN and/or COHEN since the integrity of the NY undercover operation would be involved.

NY0796 3270648

PP HQ DE MM LV SFO WFO

DE NY 0039

P 230425Z NOV, 78

23 NOV 78 07 36

FM NEW YORK (BQMRA HAUPPAUGE) ([redacted]

TO DIRECTOR PRIORITY

ATTN TRANSPORATION AND CRIME UNIT CID ROOM 5042 JEH

DETROIT PRIORITY

ATTN SPECIAL AGENT KERMIT STARE

MIAMI PRIORITY

ATTN SPECIAL AGENT EVERETT WHATLEY

LAS VEGAS PRIORITY

ATTN EMMETT MICHAELS

SAN FRANCISCO PRIORITY

ATTN SPECIAL AGENTS DONALD MC PHERESON AND PATRICK MURPHY

WASHINGTON FIELD PRIORITY

ATTN SPECIAL AGENT DIXON

BT

UNCLAS

ABSCAM, ITSP, OO:NEW YORK

RETELCALL TO LAS VEGAS, NOVEMBER 22, 1978, "HAND CARRIED TO ROOM 5042 JEH".

Assoc. Dir. ____
Dep. AD Adm. ____
Dep. AD Inv. ____
Asst. Dir.: ____
Adm. Serv. ____
Crim. Inv. ____
Ident. ____
Intell. ____
Laboratory ____
Legal Coun. ____
Plan. & Insp. ____
Rec. Mgnt. ____
Tech. Servs. ____
Training ____
Public Affs. Off. ____
Telephone Rm. ____
Director's Sec'y ____

rbs

ST-129

LEI

REC-39 [redacted] 67

23 NOV 27 1978

TELETYPED 10.18

PAGE TWO UNCLAS

FOR INFORMATION OF RECEIVING OFFICES, ABSCAM DBA ABDUL ENTERPRISES LIMITED, HOLBROOK, NEW YORK, IS AN UNDERCOVER OF BQMRA. PRINCIPALS OF RICH ARAB WHO HAS DESIGNATED ABSCAM AS A SOUL REPRESENTATIVE IN THE UNITED STATES TO DIVERSIFY HIS INVESTMENTS.

CONTACTS BY ABSCAM PRINCIPALS IN MIAMI DURING NOVEMBER, 1978, WILL BE TO A MEETING WITH BEN COHEN, 74 YEARS OLD, 5'9", 165-170 POUNDS, GRAY HAIR. COHEN IS A PRACTICING ATTORNEY IN MIAMI AND CLAIMS CLOSE ASSOCIATION WITH MIAMI UNDERWORLD [redacted] COHEN ADMITTS TO SERVING TIME IN A FEDERAL PRISON FOR TAX EVASION FOR WHICH HE WAS DISBARRED, BUT LATER REINSTATED.

ADDITIONAL CONTACTS BY ABSCAM PRINCIPALS IN NOVEMBER, 1978, REVEALED A MEETING WITH RICK WYNN, A FIFTY YEAR OLD REPUTED INTERNATIONAL LAWYER, BORN IN THE UNITED STATES, BUT MAINTAINED SWISS CITIZENSHIP, RESIDES IN BAR HARBOR, FLORIDA. WYNN BOASTS HIS RESIDENCE IS ACROSS THE STREET FROM MYER LANSKY, HIS CLOSE FRIEND. WYNN ALLEGEDLY IS A FORMER IRS EMPLOYEE OF FOURTEEN YEARS AND REPUTABLY HANDLES ALL TAX MATTERS FOR

PAGE THREE UNCLAS

ORGANIZED CRIME. [redacted]

FOR INFORMATION OF LAS VEGAS, ABSCAM LIMITED, THAT JOE GENNETTI AND GEN SCO COMPANY ON EAST FLAMINGO ROAD SEVERED HIS BUSINESS RELATIONSHIP WITH SONNY SANTINI AND ELY AYDES. ACCORDING TO ABSCAM SOURCES, SANTINI WAS ARRESTED ON A BENCH WARRANT AND IS CURRENTLY IN MANHATTAN. RECENT CONTACTS WITH RON SABLOSKI, ASSOCIATE OF SANTINI, INDICATE THAT HE, HIS BROTHER, PERRY SABLOSKI AND TONY BARADI (PHONETIC), HAVE JOINED GENNETTI IN A SCAM OPERATION.

ABSCAM SOURCES INDICATE GENNETTI PASSING CD'S IN MIAMI, FLORIDA AND WASHINGTON, D.C. FURTHER, A WOMAN IN TEXAS ALLEGEDLY WAS TAKEN FOR 150,000 DOLLARS IN ONE OF GENNETTI'S SCHEMES

ABCAM IS IN CLOSE CONTACT WITH GENNETTI AND SABLOSKI ET AL.

PAGE FOUR UNCLAS

RECENTLY ABSCAM'S BUSINESS MANAGER, NY 6774-C WAS OFFERED A POSITION WITH GENNETTI'S ORGANIZATION.

A RECENT VISIT TO LAS VEGAS BY ABSCAM'S PRINCIPALS REVEALED THAT GENNETTI BRAGGED ABOUT THE PROLIFERATION OF HIS BANKS THROUGHOUT THE WORLD. ABSCAM'S CONTACTS WITH RON SABLOSKI ET AL INDICATE THAT GENNETTI IS BUILDING A PHYSICAL PLANT FOR HIS ANTIGUA BANK. SOBLOSKI OFFERED ABSCAM COMPLETE USE OF GENNETTI'S MACHINERY FOR WHATEVER ABSCAM DEEMED PROPER.

[redacted]

FURTHER, ABSCAM IS IN A POSITION TO PLACE AN UNDERCOVER AGENT INTO GENNETTI'S OPERATION WHERE THE UNDERCOVER AGENT HAS THE POTENTIAL OF GAINING INFORMATION REGARDING THE CASINOS WASH MONEY THROUGH HIS OPERATION. FURTHER, THE UNDERCOVER AGENT WOULD BE IN THE POSITION TO ESTABLISH A RICO VIOLATION AGAINST

PAGE FIVE UNCLAS

GENNETTI.

[redacted]

MIAMI WILL ADVISE NEW YORK IF THEY DESIRE FURTHER CONTACT WITH BEN COHEN AND SAUL J. COOPER, ET AL, AND IF THEY WISH TO TO INSERT AN UNDERCOVER AGENT TO TARGET THESE INDIVIDUALS. NEW YORK STANDS READY TO ASSIST MIAMI IN THIS REGARD.

LAS VEGAS WILL ADVISE NEW YORK IF WYNN HAS THE CONNECTIONS HE BRAGS ABOUT. FURTHER, ADVISE NEW YORK IF LAS VEGAS DESIRES TO INSERT UNDERCOVER AGENT INTO GENNETTI'S OPERATION AND IF OTHER EACH TARGETS AT WHICH NEW YORK, LAS VEGAS AND SAN FRANCISCO CAN WORK THROUGHT JOINTLY OR SEPARATELY.

WASHINGTON FIELD WILL ADVISE NEW YORK IF NEW YORK CAN AID WASHINGTON FIELD REGARDING THE PROLIFERATION OF GENNETTI'S CD'S.

EXHIBIT 25

U.S. Department of Justice

Federal Bureau of Investigation

Office of the Director

Washington, D.C. 20535

November 8, 1982

Honorable Charles McC. Mathias, Jr.
Chairman
Select Committee to Study Law Enforcement
Undercover Activities of Components
of the Department of Justice
United States Senate
Washington, D. C. 20510

Dear Chairman Mathias:

This letter is in response to your letter of October 5, 1982.

Enclosed are my responses to your questions and those of Senator Inouye. These numbered responses correspond to the numbered questions and, where appropriate, documentation is supplied.

I hope that this information and documentation will be helpful to your inquiry.

Sincerely yours,

William H. Webster

William H. Webster
Director

Enclosures (5)

1 - Mr. Robert A. McConnell
Assistant Attorney General
Office of Legislative Affairs

RESPONSES TO QUESTIONS

SUBMITTED BY CHAIRMAN MATHIAS

1. The words "active responsibility" refer only to Special Agent (SA) John McCarthy's undercover assignment as he was relieved by SA Anthony Amoroso, Jr., who had greater undercover experience, as well as greater familiarity with organized crime investigations. This substitution did not conclude SA McCarthy's participation in ABSCAM as he was then designated the case Agent for this undercover operation.

2. The decision to contact the person named in the document dated July 2, 1979, was based on the representations of Errichetti that he had corrupt influence over this individual.

i. This decision was made by Senior Supervisory Resident Agent John Good after consultation with Strike Force attorneys in the Eastern District of New York and supervisory personnel at Federal Bureau of Investigation (FBI) Headquarters.

ii. This decision was memorialized in the document dated July 2, 1979, and submitted to the Assistant Director, Criminal Investigative Division, for his approval.

b. When Angelo Errichetti provided the handwritten list and the picture book he indicated that these persons might eventually be in a position to assist the Arabs in future business deals. No immediate decision to meet these persons was made. Only after Errichetti made representations that a specific politician was willing to engage in specific illegal activities and a scenario or reason for a meeting was developed was a final decision made to go forward with a meeting.

c., d. No documents were located which reflect the request for or the results of indices searches on the person identified in the July 2, 1979, document and the persons identified by Errichetti in the documents he provided on March 30 and 31, 1979.

However, I have been advised that, as the names of all persons identified as subjects were received from a field office, FBI Headquarters personnel would initiate a telephonic request for an indices search of the names.

If the subject of an indices search was found to be the subject of other pending or closed investigations, the field office would communicate this information to FBI Headquarters. These searches developed information which was documented and communicated to FBI Headquarters on John Jenrette, Richard Kelly, Angelo Errichetti, Michael Myers, Raymond Lederer, George X. Schwartz, Harry P. Jannotti, Louis C. Johanson, and Howard Criden.

3. In addition to Senator Harrison Williams, four persons are identified as current and immediate targets of ABSCAM. These persons were identified as such as a result of the representations of Angelo Errichetti and George Katz that these persons were

likely to engage in illegal activities. These representations are reflected in the following documents:

Transcript of audio tape 1031, March 23, 1979
Transcript of audio tape 1142, June 16, 1979
Transcript of audio tape 1150, June 19, 1979
Transcript of audio tape 1134, June 10, 1979

No documents were located which reflect the request or results of an indices search. However, as I previously stated, as the names of subjects were received at FBI Headquarters, telephonic requests for indices searches were initiated.

4. I have been advised there was no instruction given to Melvin Weinberg or SA Anthony Amoroso to induce Errichetti to arrange meetings with each of the named persons, and inducements to Errichetti were unnecessary. From his knowledge of these persons and the various business activities of the Arabs, Errichetti selected some of these persons who did, in fact, attend meetings and accept bribes.

5. Policy regarding the preparation of written communications is found in the FBI's Manual of Administrative Operations and Procedures, Part II, Section 10-13.3, Recording Results of Information on Report Form (FD-302), which states in part,:

> "(1) Information which may become testimony obtained by investigative personnel shall be reported with the appropriate person set out as the author, such as Special Agent, special employee, special clerk, or other properly designated FBI employee..."

I am of aware of no request or demand made to Special Agents that they prepare an FD-302 describing how the list of March 30, 1979, was obtained from Errichetti. Special Agents are responsible for determining whether an FD-302 is required in each instance. In this instance, one should have been prepared.

The list itself was properly handled by SA John Coughlin, who, when he received the list from Melvin Weinberg, placed it in an evidence envelope with a notation as to when and from whom it was received.

6. a. through d. This bribe offer was reviewed by the Criminal Undercover Operations Review Committee who recommended that the person named in the June 22, 1979, document be offered a bribe of $50,000. This bribe offer was subsequently authorized by

Deputy Associate Director John McDermott, who was the highest executive available on this date.

e. An Assistant Director, during June, 1979, could approve bribe offers of $50,000 in the absence of higher level executives and myself.

f. I have been advised that an indices search at FBI Headquarters was conducted on the person named in the June 22, 1979, document, but no document was located which reflects this request or the results of the search.

g. i. The FBI did not conduct any research before the meeting on requirements of obtaining check cashing licenses in the State of New Jersey.

ii. The purpose of this meeting was to offer this person a bribe in exchange for using his official position to guarantee that Abdul Enterprises would obtain licenses to operate check cashing agencies in New Jersey.

iii. The FBI did not conduct any empirical research on the ease or difficulty of obtaining such a license before the meeting. At the actual meeting, the questions of SA Anthony Amoroso quickly resolved this issue when this person admitted that very few license applications were rejected. Consequently, the bribe monies were not tendered to this person.

7. The scale and sensitivity of an investigation like ABSCAM multiply problems of coordination more so than in a more limited undercover operation. In a typical operation, a single investigative office coordinates its activities with the office of a single prosecutorial agency. In a complex, multidistrict investigation, by contrast, several different investigative and prosecutorial offices are involved simultaneously in the covert phase of the investigation. Moreover, because of the sensitivity of the investigation and the particular problems generated by a multivenue operation, high-level officials of the Department and the Bureau often become involved in such operations on a day-to-day basis. Thus, what is ordinarily a single faceted problem of coordination is magnified into a problem of at least six dimensions: (1) among field offices of the Bureau; (2) between field offices and FBI Headquarters; (3) among FBI Field Offices and the U. S. Attorneys (USAs) or Strike Forces; (4) between FBI Headquarters and Washington based officials of the Department; (5) among USAs and Strike Forces; and (6) between prosecutors and the Department. It is fair to say that the administrative complexity of the operation poses a major obstacle to the efficient transmission of information, suggestions and directions, and the orderly sharing of responsibility. Thus, on September 24, 1979, ABSCAM was designated as a "Bureau Special" to assist in eliminating such problems. No one incident was the cause of ABSCAM being made a "Bureau Special."

The decision to make ABSCAM a "Bureau Special" was initiated and approved by Francis M. Mullen, Jr., then Assistant Director, Criminal Investigative Division, based on the recommendation of W. D. Gow, then Section Chief, Personal and Property Crimes Section.

8. a. through c. There were no specific events which caused these issues to be raised at that particular time. These are logical issues to be discussed in any such undercover operation and our discussion of these issues at that time was intended to reinforce their importance.

As to the issue of entrapment, concern was expressed by Mr. Heymann and me that the law of entrapment be made very clear to the undercover operatives and the informant, and that their conduct meet the standards set forth by the Supreme Court.

With respect to the new scenario, concern was expressed that continued use of the asylum scenario was unrealistic. Mr. Heymann and I believed that we should follow up on the logical leads that had already been initiated by the middlemen in the asylum scenario and a new scenario would have to be considered if we were to begin dealing with additional congressmen.

One of the other questions discussed was whether the mere promise by a congressman to use his public office in return for a bribe was sufficient for successful prosecution or whether it would be necessary for him actually to introduce legislation on behalf of the sheik or commit another overt act such as writing a letter. Of course, this issue had been discussed on a number of other occasions and Strike Force Chief Thomas Puccio was well-versed on the elements of the crime.

Finally, prior to approving a meeting with a public official, we wanted to know as much as possible about his background and any illegal activities he might be engaged in without interfering with the integrity of the ABSCAM investigation or any investigation of that public official that might have been conducted by a field office.

9. The November 1, 1979, memorandum from Gow to Mullen reflects that a conference was held at FBI Headquarters between supervisory and operational personnel involved in ABSCAM on October 29, 1979. It was obvious that enough congressmen had been contacted to insure the introduction of private legislation and further attempts to contact additional congressmen would not appear to be what would happen in a real world situation. Therefore, the operatives were instructed not to seek out any congressmen whose

names had not previously been mentioned. Moreover at this time, discussions were being held to determine if another scenario could be developed which would call for specific overt acts to be committed by predisposed politicians without involving the legislative process. We were well aware that no legislation should, in fact, be introduced for a private immigration bill as this could be subversive of the legislative process.

By November 1, 1979, FBI Headquarters officials, as reflected in the November 1, 1979, document, had decided that no further efforts should be made to expand upon the asylum scenario. That does not mean that we did not recognize a responsibility to resolve allegations that had been made up to that point. Also, it does not mean we would ignore the leads which emerged from previous contacts with corrupt influence peddlers.

10. The decision to allow Senator Pressler to come to the meeting as a substitute for another previously approved congressman was made on short notice and was a judgment call. The corrupt influence peddler had already arranged the switch and had assured SA Amoroso that the Senator knew the purpose of the meeting. The corrupt influence peddler had attended previous meetings with the operatives and had acknowledged his understanding of the "sheik's" requirements. Concern was expressed to me that the corrupt influence peddler, himself a subject of investigation, might become suspicious if the sheik's representatives refused to see Senator Pressler.

Approval of a bribe payment was subject to contingency requirements which also acted to safeguard a public official who was not predisposed to engage in crime and who might come without being made aware of the corrupt purpose of the meeting. The public official had to acknowledge the illegal purpose of the meeting, had to give verbal assurances of assistance and had to accept the money personally. These safeguards worked.

While we cannot anticipate every situation which may occur in the future, every effort will be made to assure an opportunity for an informed judgment in undercover scenarios where bribe payments are contemplated.

11. The Miami Field Office, on October 18, 1978, submitted a proposal for the "GOLDCON" undercover operation to FBI Headquarters which contained the following areas of crime to be targeted in Southern Florida:

1. Advance fee swindles
2. Fraudulent offshore banks
3. Stolen and counterfeit stocks

6. Shipment of stolen heavy equipment to South America
7. Laundering of drug money and organized crime profits
8. Shipment of illegal guns to South America
9. Importation of narcotics
10. Political corruption

The GOLDCON operation was subsequently approved on January 10, 1979, and was closed on March 31, 1980.

The only political figure in this investigation was the Mayor of a Florida city. An admitted "bagman" for the mayor met with Melvin Weinberg and SA Gunnar Askeland aboard the GOLDCON yacht on March 23, 1979. This person indicated the mayor would, in exchange for a "kickback," assist the operatives in the purchase of a theatre and obtaining favorable gambling laws. No payment or prosecution resulted from this investigation.

12. Since 1978, the FBI had been attempting to resolve allegations regarding the relationship between John White, Chairman of the Democratic Party, and James Cochran Day. Numerous meetings had been held; however, up until the investigation of James Cochran Day, Jr., the opportunity for direct payment to White, accompanied by his admissions that he and others would use political resources for personal gain, had not been forthcoming. As a result of this opportunity, it was decided to utilize an undercover Agent whose credibility was unquestioned, from ABSCAM, to meet with Day and White in White's office on September 20, 1979. I approved this meeting, but in the absence of assurances from White, no monies were paid.

13. Melvin Weinberg was an informant of the New York Field Office who was primarily utilized in the ABSCAM undercover operation, but did periodically provide assistance to the GOLDCON undercover operation from January, 1979, through November, 1979. Mr. Weinberg's value to both these undercover operations was due to his background and past association with various criminal elements, thereby providing instant credibility for undercover Special Agents.

The Special Agents-in-Charge of the New York and Miami Field Offices approved the utilization of Mr. Weinberg in these two operations.

14. SA Martin F. Houlihan destroyed one audio tape of a telephone conversation. On playing this tape, SA Houlihan discovered that

Attached for the Committee's review are two documents, dated November 7, 1977, and March 12, 1979, which instructed all field offices that tapes and other electronic surveillance material were not to be destroyed.

15. By check dated October 23, 1979, a copy of which is attached, SA Anthony Amoroso paid the General Motors Acceptance Corporation $6,685.47, which satisfied the remaining monies owed by Melvin Weinberg on a vehicle loan. The original purchase price paid by Mr. Weinberg for this vehicle is unknown.

The vehicle in question was a 1979 Chevrolet Camaro Z-28. The bluebook value of this vehicle, on October 23, 1979, was $6,900 retail and $6,150 wholesale.

16. The following regulations were in effect during 1980 and 1981.

The FBI's Manual of Investigative Operations and Guidelines, Part I, Section 137-10(10) states, "Gifts should not be given to informants and gifts should not be accepted from informants."

Title 28, Code of Federal Regulations (CFR), Section 45.735-2, provides as basic policy that employees shall "conduct themselves in a manner that creates and maintains respect for the Department of Justice and the U. S. Government. In all their activities, personal and official, they should always be mindful of the high standards of behavior expected of them."

Additionally, Title 28, CFR, Section 45.735-11, provides in part:

> "No employee shall make investments...which are reasonably likely to create any conflict in the proper discharge of his official duties."

Current regulations, which were not in effect in 1980 or 1981, are found in the FBI's Manual of Administrative Operations and Procedures, Part I, Section 1-14.1, which states:

> "Financial Relationships with Witnesses, Subjects, and Individuals Furnishing Information to the FBI

"(1) Because of the appearance of improper conduct or conflict of interest usually involved in such relationships as well as the high potential for actual impropriety inherent in such relationships, Bureau employees are prohibited from engaging in private business and financial relationships with subjects, witnesses, individuals furnishing information to the FBI (including informants), and counsel or other representatives of such persons without prior FBIHQ approval. This prohibition includes giving or receiving gifts, selling, purchasing, or exchanging property, making or receiving loans, and engaging in other transactions or business relationships in which some financial or tangible benefit is bestowed upon either the employee or third party."

17. The decision for Melvin Weinberg to reside in Florida was his own. Naturally, we attempt to maintin close personal contact with our informants and their movements and dealings should be monitored closely. Procedures appropriate to each situation should be worked out. In ABSCAM, our Agent personnel, both in New York and Florida, were in almost daily contact with Mr. Weinberg for purposes of debriefing and providing instructions to him.

18. A schedule of disciplinary offenses and penalties is found in the FBI's Manual of Administrative Operations and Procedures, Part I, Section 13, pages 159-163. These specific pages are attached for the review by the Committee.

19. The following is a schedule of the total number of disciplinary sanctions imposed on Special Agents during the years 1979 to the present. Statistics of this nature were not maintained prior to 1979. Therefore, to compile these statistics for the years 1977 and 1978 would require a hand search of the personnel records of current and past employees which are voluminous.

	1979	1980	1981	1982 (through September, 1982)
Adverse Actions	9	9	13	16
Non-Adverse Actions	167	157	192	174
Total	176	166	205	190

It would be impractical to list the specific sanctions imposed in each of the 737 cases listed for the years 1979 through September, 1982. However, I can assure you that I have imposed the full range of sanctions set forth in my response to Question #18.

20. a. Having FBI Headquarters supervisors send instruction packets to every Agent who begins working on an undercover operation would duplicate procedures already in place. After a new Group I undercover operation is approved, a start-up communication is sent by the Undercover and Special Operations Unit (USOU), Criminal Investigative Division, to the personal attention of the Special Agent-in-Charge of that field division. This communication directs attention to communications and documents already on file in an administrative undercover file in

that division with respect to: (1) Attorney General's Guidelines; (2) Undercover Funding Guide; (3) exemptions; (4) monthly vouchers; (5) consensual monitoring; (6) acquisition of property; (7) alias/false identification; (8) monthly status reports; and (9) computer stops.

Second, undercover Agents and field supervisors in charge of undercover operations are selected to attend week-long seminars at the FBI Training Academy at Quantico, Virginia, prior to or early in their assignment to an undercover operation. The matters enumerated in points 1 - 9 are each covered in one- or two-hour blocks devoted to legal matters, handling of evidence or administrative procedures.

Third, on-site visits to Group I undercover operations are most often conducted by teams of supervisors from FBI Headquarters shortly after a project is approved at FBI Headquarters. The purpose of on-site visits is twofold: (1) to assist personnel assigned to an undercover operation in solving initial problems, avoiding mistakes common to most new undercover operations and answering questions, all based on the collective experiences of our Agents in the use of the undercover technique across the country; and (2) to assure the managers at FBI Headquarters that personnel assigned to the operation have received the necessary instructions with regard to issues such as enumerated in points 1 - 9.

Fourth, as noted above, an administrative undercover file exists in each field office which contains all undercover policy and instructions from FBI Headquarters since 1976, to include each of the matters enumerated in points 1 - 9. Moreover, as Agents are assigned to an undercover operation, they are directed to review this file by their supervisor and by the start-up communication noted above.

b. The field supervisor in charge of the undercover operation, because of his close working relationship with the case Agent, is in a better position to insure that points 1 - 9 are observed.

c. It is not necessary to require undercover Agents and supervisors to meet with experienced Headquarters personnel prior to the termination of every undercover operation. In most operations, preparation for the termination of the covert phase can be handled adequately through regular on-site reviews conducted by Headquarters supervisors once through routine communications between field offices and Headquarters. In those operations which require more attention, planning sessions with experienced Headquarters personnel are held.

d. When taping equipment malfunctions or circumstances dictate that a conversation not be taped, a statement to that effect is incorporated into an FD-302.

e. The identity of all parties monitored along with the dates they were first monitored during an undercover operation are required to be set forth on 3 x 5 cards known as overhear cards and submitted to FBI Headquarters the Friday of the week in which the monitoring occurred. The dates of subsequent monitoring of these same individuals are recorded on duplicate cards maintained in the field division. Both requirements are mandated by FBI electronic surveillance regulations patterned after requirements set forth in a Title III.

A monthly summary of all topics discussed during consensually monitored conversations is not required as such, but FBI Headquarters does require a monthly summary to be submitted of significant meetings/conversations with subjects of the investigation along with prosecutable cases developed. Thus, in effect, monthly consensual monitoring summaries do exist.

21. The FBI has instituted the following safeguards:

(1) The Criminal Undercover Operations Review Committee specifically considers this risk each time an operation is presented with potential for civil liability of this type. Only after the members of the Committee are confident this risk has been minimized will they recommend the operation for approval by the Assistant Director of the Criminal Investigative Division.

(2) Personnel involved in the conduct of undercover operations are instructed during undercover seminars and on-site visits not to divulge, if at all possible, the identities of individuals or corporations providing cover for the operation to informants or cooperating witnesses. If it is not feasible to protect the identities of the individuals or corporations providing cover, at least all contact or meetings between them is to be avoided, if possible. In this connection, per instructions in the FBI's Manual of Investigative Operations and Guidelines, informants are to be provided with no information other than that necessary to carry out their assignments.

(3) Per instructions from FBI Headquarters contained in the undercover administrative file in each field division, all letterheads and stationery for front companies are to be maintained in a secure and circumspect manner as is the case with alias/false identification to avoid misuse of same. These instructions are reiterated at the undercover seminars and during the on-site visits.

(4) As set forth in instructions to our field divisions, found in the undercover file in each division, informants are to be phased out of an operation in favor of using undercover Agents whenever possible. Also, payments of bribes, purchase of evidence, etc., are to be done, whenever possible, by undercover Agents rather than informants or cooperating witnesses. These instructions are likewise reiterated during undercover seminars and on-site trips.

Questions re FRONTLOAD

1. In August of 1978, Norman Howard was charged with four counts involving Interstate Transportation of Stolen Property and Fraud Against the Government for insurance fraud unrelated to "Operation FRONTLOAD." In February of 1979, he pleaded guilty to two counts of this four-count indictment in U. S. District Court, Northern Distict of Illinois, and was sentenced to one year with four years probation. He was not prosecuted on fraud charges relative to "Operation FRONTLOAD" because of the pending nature of the criminal investigation at that time.

2. Norman Howard was first utilized as a criminal informant by the Chicago Division beginning in May of 1963. He was utilized as a marginally successful source of the Chicago FBI until January of 1970 when he was closed for failure to furnish sufficient information to justify his retention as an informant.

The Indianapolis FBI Office proposed reopening him as a top echelon criminal informant in December of 1975. Just prior to this Howard had been convicted in the Northern District of Indiana on Bank Fraud and Embezzlement, Obstruction of Justice, Bond Default and Interstate Transportation of Stolen Property charges. Under the terms of the plea agreement, Howard had received sentences totalling 10 years. However, with the approval of U. S. District Judge Alan Sharp, Northern District of Indiana, the Chicago Strike Force Head, Peter Vaira, and Assistant U. S. Attorney Richard Hanning, Northern District of Indiana, approved that Howard be made available to the FBI for use in connection with current investigations.

The Indianapolis FBI Office utilized him for approximately eight months thereafter in ongoing criminal investigations. He was subsequently closed by the Indianapolis FBI Office due to his pending testimony in cases in that district. He was reopened by the Chicago FBI and was utilized by them as an informant in the organized crime area just prior to his being utilized in "Operation FRONTLOAD."

Howard's background prior to this included employment as a bail bondsman, Chicago policeman, and U. S. Post Office employee. In January o 1978, just prior to "Operation FRONTLOAD," the Chicago FBI Office noted that Howard specialized in the writing of surety bonds, specifically performance and contract bonds for construction projects. It was noted at this time that in late 1977, the Government had made a motion to reduce Howard's sentence to time served in the aforementioned conviction. This motion had been granted by the trial judge and Howard was placed on five years probation. The trial judge had been made aware that Howard was continuing to provide information to the FBI following his resentencing and being placed on probation. In addition, officials of the U. S. Attorney's Office, Northern District of Indiana, and the Chicago Strike Force were also made aware of this activity. The U. S. Attorney's Office, Northern District of Illinois, found that as long as this was a voluntary arrangement there were no objections.

3. With regard to part one of this question, no such agreement was ever reached prior to the discovery that Howard was writing payment and performance bonds with New Hampshire Insurance Company (NHIC) as surety; however, subsequent to the FBI being made aware of Howard's activity, such an agreement was made. Following a meeting on March 21, 1979, between former Attorney General Griffin B. Bell and I, it was decided that the United States would protect NHIC from financial losses arising out of "Operation FRONTLOAD." This followed a meeting on March 14, 1979, between then Attorney General Bell and Mr. Maurice Greenberg of American Insurance Group. By letter of April 11, 1979, former Associate Attorney General Michael J. Egan offered to allow the United States to be impleaded as a third party defendant in "FRONTLOAD" related civil actions in order that the United States could defend NHIC and pay any judgments against it.

On the issue of indemnification agreements prior to the discovery on May 30, 1978, that Howard had been writing unauthorized bonds, NHIC contends that they discussed this question as early as March 1, 1978, when Howard and the two undercover Agents were introduced to Carl Barton, president of NHIC. Barton maintains that he brought up the subject of indemnification at that time in the event that any of the bonds written by Howard went "sour." According to NHIC, one of the undercover Agents pointed out that there was no chance that "the mob" would default on these projects. Barton said that the problem was larger than the problem of default; even if the risk was clearly insurable it would violate NHIC's contracts with reinsurers if such bonds were written without full disclosure of an existing agreement of indemnification. The undercover Agents disagree with Barton's version, maintaining that indemnification was not discussed until a much later date. At any rate, the first written record regarding indemnification was a letter of April 13, 1978, mailed to an FBI

Agent in Chicago enclosing an indemnification agreement which was followed by the FBI draft letter to Carl Barton. There were no formal agreements reached as a result of these negotiations regarding indemnification.

4. At its inception, "Operation FRONTLOAD" was begun to place two undercover Agents in the construction industry using the guise of an insurance bonding agency capable of producing bid, payment and performance bonds in order to investigate organized crime control of the construction industry. In particular, the investigation focused on organized crime control in the Department of Housing and Urban Development (HUD) projects situated in New York and New Jersey and on related political corruption, labor racketeering and frauds perpetrated against HUD. It was believed that under the guise of a bonding agency the undercover Agents would have the opportunity to monitor this ongoing illegal activity with an option open for a degree of participation in these illegal activities with targets of the investigation under standards which would avoid entrapment. It was not contemplated initially that Norman Howard would have the actual authority to write bonds, only that he have the apparent authority in order to provide the undercover Agents and Howard an entree into the organized crime elements in the construction industry.

Questions re LABOU

1. The initial agreement with Muffoletto called for him to be paid a salary at an annual rate of $72,000. Additionally, Muffoletto was furnished an automobile and paid transportation expenses associated with his commuting between Washington, D. C., and New York. Following the execution of a contract between Muffoletto and the Bureau dated November 13, 1979, Muffoletto was entitled to draw up to $6,000 per month from the gross receipts of Olympic Construction Corporation (OCC). Also, he was authorized to be reimbursed from the gross receipts of joint venture contracts up to $225 per month for automobile transportation expenses and up to $500 per month for airline transportation and associated commuting expenses between Washington, D. C., and New York.

As indicated above, initially, Muffoletto's salary was paid for by the FBI, but after June of 1979, Muffoletto's salary was paid for by OCC.

The sale of OCC to Muffoletto at the conclusion of the operation was not considered to be part of the compensation. In fact, Muffoletto paid the FBI $70,000 in cash and forgave the FBI's share on the cost of a computer valued at $22,773. At the value of the company was in contracts being performed, many of which had had substantial draws made on these contracts and had little in the way of profit remaining. Therefore, the principal asset of the company at the time of sale was in its "goodwill," and all "goodwill" had, in fact, been established through the efforts of Muffoletto. It is the opinion of the FBI and Muffoletto that the payment of compensation by Muffoletto to the Bureau far exceeded the value of the company at the time of sale but was done so by Muffoletto in an effort to reimburse the Bureau for its contribution of initial working capital. It was believed by Muffoletto that if he reimbursed the Bureau for its contribution of working capital, a subsequent review by outside authorities would be less critical.

2. During the conduct of the undercover operation, OCC did realize profit from construction projects, but these profits were utilized to finance the undercover operation and to pay for the overhead of the company. All funds generated were reinvested into the company, and there was no surplus at the time of the Bureau's disengagement from the activities of the company and the sale of the company to Muffoletto. The only funds which remained were those paid by Muffoletto, i.e., $70,000 which was returned to the Treasury as miscellaneous receipts.

3. Undercover Special Agents, in concert with Muffoletto, played a dual role in creating the opportunities for illegal conduct by suspected con men, financiers and persons associated with all aspects of the construction trade. The creation of the construction company scenario was based on the belief that in order to penetrate ongoing corruption in the construction industry, it would be necessary to compete with corrupt companies on an equal footing and to be invited to any ongoing conspiracies. The undercover company was portrayed in the community as being corrupt with a financial statement of suspicious origin which created the opportunity for corrupt individuals to enter into an illegal relationship with the company. The FBI, as a general rule, would not create a situation simply as a listening post as such an activity would prove to be of minimal worth in making a prosecutable case.

4. No other convictions resulted from LABOU except for the "bust out" scheme.

Questions re LOBSTER

1. The informant, rather than cooperating witnesses, introduced the undercover Agents to many of the early subjects in this operation. After these initial introductions, the need for informants

diminished because these subjects began introducing new subjects to the undercover Agents.

2. According to the scenario, the primary undercover Agent was to pose as a salvage dealer/broker dealing in stolen/hijacked truckloads of merchandise. Since he controlled the warehouse which was portrayed as a "safe drop," this was very attractive to members of hijack gangs. After initial informant introductions had been made and initial subjects had observed the warehouse, these subjects spread the word among the criminal element and the undercover Agent could more or less wait to be contacted. However, in some instances, where predisposition had been established on the part of certain subjects, he would solicit stolen goods from them or sell them purportedly stolen goods with an eye towards "having the favor returned." He did not solicit particular types of stolen goods since the type of property had no bearing on making a prosecutable case. However, he did clearly indicate he was interested in buying entire loads as opposed to single items.

RESPONSES TO QUESTIONS

SUBMITTED BY SENATOR INOUYE

1. At the time of my review of the October 20, 1979, tape, the illegal transaction had already taken place. My purpose on review was to monitor the techniques used in an ongoing investigation. In my opinion, the illegal nature of the opportunity should have been clear to Congressman Murphy. Those responsible for exercising prosecutive discretion reached the same conclusion.

2. My conclusion was based on what I saw and heard and not on the language of the October 18, 1979, memorandum.

3. I personally authorized the offer of a bribe to Mr. Murphy.

4., 5. I do not recall reviewing recorded conversations between Criden and Weinberg in connection with this authorization. I relied upon the contents of the October 18, 1979, memorandum from Gow to Mullen seeking approval and setting forth the basis thereof, and on the recommendations of senior FBI and Strike Force officials as set forth in that memorandum.

6. The following transcripts reflect that Criden was aware of the illegal nature of our proposed transaction and that he would communicate this to Congressman Murphy:

Transcript of videotape 115, October 9, 1979
Transcript of audio tape 1345, October 10, 1979
Transcript of audio tape 1349, October 12, 1979
Transcript of audio tape 1351, October 14, 1979
Transcript of audio tape 1353, October 15, 1979
Transcript of audio tape 1355, October 15, 1979
Transcript of audio tape 1380, October 17, 1979

7. I am personally satisfied that the October 20, 1979, videotape reveals that the illegal nature of the proposed transaction was made clear to Mr. Murphy and that he willingly chose to participate.

8. It is my understanding that Government prosecutors requested that Murphy be recontacted for the purpose of obtaining additional evidence, not that the case established by the videotape of the October 20, 1979, meeting was insufficient to submit to a jury.

9., 10. Yes, I attended this meeting with persons identified in DP Exhibit 64, Headquarters File Document #299. I am advised that the Committee is in receipt of this document. It is my understanding that the investigation was being coordinated on a daily basis with Department of Justice Strike Force Chief Attorney Thomas Puccio, EDNY, who maintained regular contact with other officials in the Criminal Division of the Department. Significant developments were regularly discussed and reviewed between officials of FBI Headquarters and the Criminal Division.

11., 12. The request for authorization to make a bribe payment to Congressman Murphy, which I approved, is contained in the Gow to Mullen memorandum dated October 18, 1979. That memorandum reported that Criden had represented that for a payment of $50,000, Congressman Murphy would promise to obtain political asylum or permanent residence status for the "sheik." The memorandum further stated that Thomas Puccio, Chief, Federal Organized Crime Strike Force, EDNY, had recommended that the $50,000 payoff be made to U. S. Congressman Murphy provided he made the necessary commitments. I cannot say whether Mr. Puccio consulted with other Departmental officials prior to the payment.

13., 14., 15. There were no specific events which caused these issues to be raised at that particular time. These are logical issues to be discussed in any such undercover operation and our discussion of these issues was intended to reinforce their importance.

As to the issue of entrapment, concern was expressed by Mr. Heymann and me that the law of entrapment be made very clear to the undercover operatives and the informant, and that their conduct meet the standards set forth by the Supreme Court.

With respect to the new scenario, concern was expressed that continued use of the asylum scenario was unrealistic. Mr. Heymann and I believed that we should follow up on the logical leads that had already been initiated by the middlemen in the asylum scenario and a new scenario would have to be considered if we were to begin dealing with additional congressmen.

One of the other questions discussed was whether the mere promise by a congressman to use his public office in return for a bribe was sufficient for successful prosecution or whether it would be necessary for him actually to introduce legislation on behalf of the sheik or commit another overt act such as writing a letter. Of course, this issue had been discussed on a number of other occasions and Strike Force Chief Thomas Puccio was well-versed on the elements of the crime.

Finally, prior to approving a meeting with a public official, we wanted to know as much as possible about his background and any illegal activities he might be engaged in without interfering with the integrity of the ABSCAM investigation or any investigation of tht public official that might have been conducted by a field office.

It was my belief that the concerns which surfaced at this meeting would be communicated to the supervisors and the undercover Agents involved in the case. I have been advised that this was done.

16., 17. There are two handwritten notations on DP Exhibit 64, Headquarters File Document #353. The handwritten notation referred to in Question #16 is that of Headquarters Supervisor Michael D. Wilson. SA Wilson made this notation following a discussion with me regarding my notation which stated, "Same previous requirements--payments to be made personally to the Congressman after these representations."

I had no concern that congressmen, in previous bribe offers, had not been paid directly or that the necessary commitments had not been obtained. I wanted to avoid a situation in which, rightly or wrongly, a public official could contend that he had not received money paid to an intermediary purporting to be acting for him.

Further instructions were not necessary. The Agents involved correctly interpreted my instruction to mean that following the criminal representations by the public official, the money should be delivered personally to the public official or, with his approval and in his presence, to his intermediary.

P 080025Z NOV 77

FM DIRECTOR

TO ALL SACS PRIORITY

BT

CLEAR

PERSONAL ATTENTION

DESTRUCTION OF FIELD FILES AND RECORDS, BUDED: NOVEMBER 8, 1977.

RE BUREAU LET TO ALBANY AND ALL OFFICES, OCTOBER 28, 1977.

IN VIEW OF INQUIRIES RECEIVED FROM FIELD OFFICES REGARDING DESTRUCTION OF ELECTRONIC SURVEILLANCE (ELSUR) RECORDS, MATERIALS, AND RELATED CORRESPONDENCE, ALL OFFICES ARE INSTRUCTED TO POSTPONE DESTRUCTION OF TAPES, LOGS, TRANSCRIPTS, RELATED RECORDS, AND COMMUNICATIONS REFLECTING DISSEMINATION OF ANY ELSUR INFORMATION RELATED TO NATIONAL SECURITY MATTERS, TITLE III MATTERS, CRIMINAL INTELLIGENCE MATTERS, AND CONSENSUAL MATTERS UNTIL FURTHER INSTRUCTIONS ARE FURNISHED BY FBIHQ.

ALL LEGATS ADVISED SEPARATELY.

BT

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SERIALIZED ____ FILED
NOV 7 8 35 PM '77
FBI-WASH. T.O.

TRANSMIT VIA: airtel

PRECEDENCE:

CLASSIFICATION:

DATE: 3/12/79

TO: SAC, Albany PERSONAL ATTENTION

FROM: Director, FBI

DESTRUCTION OF FIELD FILES
AND RECORDS; ELSUR MATTERS

Reference Headquarters letters to SAC, Albany and all offices 8/15/77 and 10/28/77, as well as teletype to all SACs 11/7/77.

Referenced letters set forth procedures to be followed in implementing Field File destruction program.

In referenced teletype, offices were instructed to "postpone destruction of tapes, logs, transcripts, related records, and communications reflecting dissemination of any Elsur information related to national security matters, Title III matters, criminal intelligence matters, and consensual matters until further instructions are furnished by FBIHQ." This airtel does not change that instruction.

FBIHQ has recently received several questions from the field regarding the procedure to be followed by an auxiliary office when reviewing an investigative file that meets file destruction criteria.

Until the present moratorium on the destruction of Elsur records and/or correspondence can be resolved, all

2 - Each Field Office
2 - Each Legal Attache

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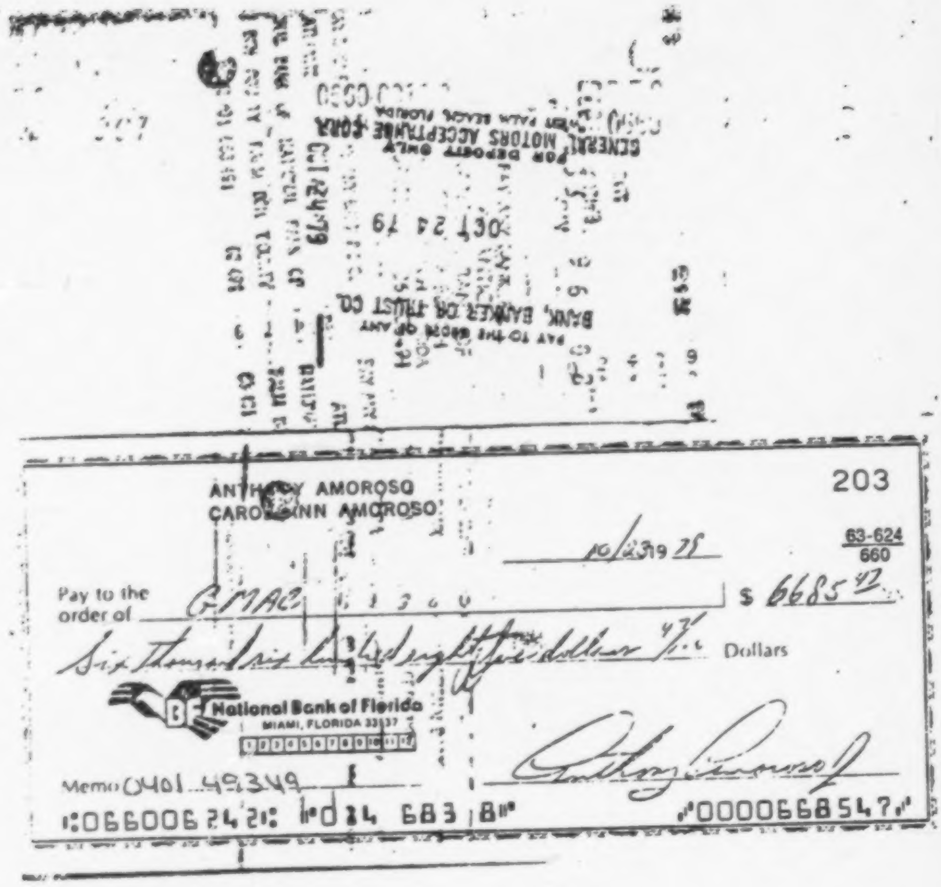
files containing Elsur records and correspondence should be retained. Auxiliary office files, upon being identified as a file containing Elsur records and/or correspondence, should be marked on the cover "Elsur" and a tickler set for review ten years from the date RUC'D. Each of those files so labeled should be subject of the usual notification sent FBIHQ to record the fact that that file has not been destroyed, and is being retained beyond the established destruction period pursuant to instruction contained in Bureau letter 5/8/78, captioned "Destruction of Field Files and Records."

In the event a field office has any questions or observations regarding this aspect of the file destruction program, telephone inquiry or correspondence can be directed to FBI Headquarters, Records Management Division, Elsur Index, Room: 4448-JEH, extension 3300.



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Six thousand six hundred eighty five dollars 47/100 Dollars

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Memo 0401 49349

Anthony Amoroso

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PART I

SECTION 13. DISCIPLINARY MATTERS

13-12 SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

(1) This schedule is to be used only as a guide in determining appropriate discipline based on the violation of regulations by Bureau employees. This schedule is not all inclusive, and final determination of the appropriate disciplinary action warranted in each case will be made by FBIHQ. It should be noted that the decision-making process utilized in determining appropriate action in disciplinary matters is extensive in nature and involves input from every level of management in FBIHQ. In addition, consideration is given to Bureau policy and similar incidents previously resolved, as well as any aggravating or mitigating circumstances of the case in point. In some instances, discussions are held with the Department of Justice and the Office of Personnel Management before a final determination is made. In most instances, penalties for violations of regulations will fall within the range of penalties set forth in this schedule. In aggravated case, a penalty outside the range of penalties may be imposed. For example, supervisors and Bureau officials, because of their responsibility to demonstrate exemplary behavior, may be subject to a greater penalty than is provided in the range of penalties. The purpose of this schedule is not to remove the personnel management decisions made in all disciplinary matters but rather to provide an example and guide which is used at FBIHQ in connection with decisions made in regard to disciplinary matters.

(2) In regard to suspensions, it is noted that the Civil Service Reform Act (CSRA) of 1978 provides that days of suspension will be computed in terms of calendar days, not days worked. Therefore, recommendations for a period of suspension will only be made in terms of calendar days. A period of suspension will always commence at the close of business, Friday of any given week. For example, recommendation of seven (7) days' suspension, if approved, will result in a forfeiture of five days' pay whereas a recommendation of fourteen (14) days' suspension will result in a forfeiture of ten days' pay. A period of suspension in excess of 14 calendar days is an adverse action as defined in the CSRA of 1978 (see paragraph 13-10 of this section for details).

(3) For the purpose of definition, an "adverse action" is where [an employee is reduced in grade or pay, suspended for more than [14] days or dismissed. All employees may appeal disciplinary action to the Director of the FBI. Thereafter, nonveteran employees in the FBI, an excepted service, do not have a right of appeal of a disciplinary action to the Merit Systems Protection Board. However, they may file an action in court. In conformance with the provisions of the Veterans' Preference Act of 1944, a veteran, following final action on an appeal to the Director of the FBI, may appeal an adverse action to the Merit Systems Protection Board and, thereafter, may file an action in court.

(4) The following definitions are furnished for information. This schedule does not include discipline required by law or infractions which, in addition to being a violation of Bureau rules and regulations, are also a criminal offense.

(a) Oral reprimand--Employees are advised of deficiency or infraction of regulations and notation made in personnel file relating to the need for the official reprimand.

(b) Commented upon in annual performance rating--In this instance, the infraction warranted more than an oral reprimand but is not considered severe enough for official recognition in the form of a letter of censure. This refers to work-related matters only.

(c) Censure--Official written reprimand.

(d) Censure and probation--Official written reprimand which includes a minimum probationary period of 90 days for Special Agents and 60 days for other employees.

(e) Censure, probation and suspension--Official written reprimand which, in addition to a probationary period, includes a period of time in which the employee is removed from duty without pay.

(f) Demotion--Any reduction in grade or pay.

(g) Removal--Dropped from the rolls of the FBI.

(5) The standards by which all employees are held are set forth in greater detail in this manual. For further reference, these standards of conduct can be found in the Department of Justice Order 350-65 captioned "Standards of Conduct."

[(6) An employee may be censured when the cause for administrative action is sufficiently aggravated as to require a written reprimand. At the time FBIHQ makes a promotional decision, all relevant information including the cause for a letter of censure is considered. FBIHQ expects the employee's superior to provide a strong favorable recommendation when the employee has been the subject of disciplinary action within the preceding 12 months. Lacking such a recommendation, the Bureau may determine that a promotion from one GS or Wage level to another should be delayed for a period of up to 60 days for support employees or up to 90 days for Agents.]

SECTION 13. DISCIPLINARY MATTERS

SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

	NATURE OF OFFENSE	REMARKS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
1.	Unexcused or unauthorized absence of 8 hours or less	All Personnel	Oral reprimand to 3-day suspension	Oral reprimand to 5-day suspension	Oral reprimand to removal
2.	Excessive unauthorized absence (in excess of 8 hours)	All Personnel	Oral reprimand to 5-day suspension	Oral reprimand to 15-day suspension	Oral reprimand to removal
3.	Work deficiencies and/or inattention to duty	Agent Personnel	Oral reprimand to removal	5-day suspension to removal	15-day suspension to removal
		*Non-Agent Personnel	Oral reprimand to removal	3-day suspension to removal	5-day suspension to removal
4.	Insubordination	All Personnel	Censure to removal	5-day suspension to removal	15-day suspension to removal
5.	Unauthorized possession of, use of, loss of or damage to Government property other than motor vehicle or aircraft	**All Personnel	Oral reprimand to removal	3-day suspension to removal	5-day suspension to removal
6.	***Unauthorized possession of, use of, loss of or damage to Government-owned or leased motor vehicle or aircraft	All Personnel	Oral reprimand to removal	3-day suspension to removal	5-day suspension to removal

*Excluding Fingerprint Examiners, Technical Section, Identification Division, for whom standards of production and accuracy, as well as minimum penalties, have been established.

**Non-Agent Personnel - First loss of Bureau Identification - no administrative action.

***Title 31, U. S. Code, Section 638a (c)(2), provides a minimum of 30 days suspension for employee who willfully uses or authorizes the use of any Government-owned or leased motor vehicle or aircraft for other than official purposes.

SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

NATURE OF OFFENSE	REMARKS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
7. Traffic violations	All Personnel			
[a. Aggravated (all types)		Oral reprimand to removal	Oral reprimand to removal	Oral reprimand to removal
b. Driving While Intoxicated		Oral reprimand to removal	5-day suspension to removal	15-day suspension to removal]
8. Illegal use of Controlled Substance (Drugs and marijuana)	All Personnel	Removal		
9. Criminal, dishonest, immoral, infamous or notoriously disgraceful conduct	All Personnel	Oral reprimand to removal	5-day suspension to removal	30-day suspension to removal
10. Failure to honor confirmed financial obligations	All Personnel	Oral reprimand	Oral reprimand	Oral reprimand to removal
11. Unauthorized disclosure of information from Bureau records	All Personnel	Oral reprimand to removal	Removal	
12. Falsification of official documents and/or records	All Personnel	Oral reprimand to removal	Removal	

SECTION 13. DISCIPLINARY MATTERS

SCHEDULE OF DISCIPLINARY OFFENSES AND PENALTIES FOR FBI EMPLOYEES

	NATURE OF OFFENSE	REMARKS	FIRST OFFENSE	SECOND OFFENSE	THIRD OFFENSE
13.	Availability	All Personnel	Oral reprimand to removal	Oral reprimand to removal	Oral reprimand to removal
14.	Fitness for duty (overweight)	Agent Personnel	Oral reprimand	Oral reprimand to 5-day suspension	Oral reprimand to 15-day suspension

EXHIBIT 26

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

November 12, 1982

Honorable Charles McC. Mathias, Jr.
Chairman, Select Committee to Study Law
Enforcement Undercover Activities of
Components of the Department of Justice
United States Senate
Washington, D.C. 20510

Dear Mr. Chairman:

This letter is in response to the Committee's concern, as expressed by Chief Counsel Malcolm Wheeler, regarding the destruction of a tape recording during the conduct of the Abscam investigation. By letter dated October 5, 1982, you previously inquired about this incident, and the Director responded by letter dated November 8, 1982 (copy attached). Chief Counsel Wheeler has requested further detail, and I submit the following:

On December 12, 1979, cooperating witness Melvin Weinberg received a telephone call from Joseph Silvestri. Weinberg was not available and consequently, later in the afternoon, Weinberg initiated a return call to Silvestri.

In preparation for Weinberg's return call, a Special Agent of the FBI assisted him in equipping his telephone with a device intended to record the conversation. A call was completed to Silvestri in the presence of the Special Agent. The Special Agent did not hear Silvestri's portion of the conversation; however, he did hear Weinberg's portion of the conversation. The conversation lasted approximately two minutes and, in the Special Agent's judgment, was not relevant to the investigation.

A short time later, with no one else present, the Special Agent played back the tape and discovered that only Weinberg's voice had been recorded. He concluded that the recording equipment had not been properly applied, and the following day he discarded the tape recording.

Honorable Charles McC. Mathias, Jr.

As the Director has previously observed, the tape should not have been discarded, but rather maintained as evidence. FBI policy on this issue is very clear, and expressions of that policy as communicated to our Special Agents have been previously provided to the Committee. At my direction, FBI Abscam files have been reviewed and involved personnel have been contacted. No indication has been found of additional instances where tape recordings were not properly maintained as evidence.

Sincerely yours,

Oliver B. Revell

Oliver B. Revell
Assistant Director
Criminal Investigative Division

Enclosure

1 - Assistant Attorney General
Office of Legislative Affairs
U.S. Department of Justice

EXHIBIT 27

U.S. Department of Justice

Federal Bureau of Investigation

Washington, D.C. 20535

December 6, 1982

Mr. Malcolm E. Wheeler
Chief Counsel
Select Committee to Study Law
Enforcement Undercover Activities
of Components of the Department
of Justice
United States Senate
Washington, D. C. 20510

Dear Mr. Wheeler:

In response to your letter of November 22, 1982, I am enclosing one photocopy of a moving and storage company bill in the amount of $1,796.36. Melvin Weinberg incurred these expenses as a result of moving his household goods from New York to Florida. On August 22, 1979, the Federal Bureau of Investigation (FBI) reimbursed Mr. Weinberg the entire amount of this bill.

In regard to the $6,000 paid to Mr. Weinberg in November, 1979, this was for resettlement expenses, to include but not limited to, real estate closing costs, real estate attorneys' fees and other miscellaneous expenses associated with the move from New York to Florida. Mr. Weinberg was not required to provide receipts or paid bills for these expenses.

The Brooklyn-Queens request and FBI Headquarters approval of the November, 1979, $6,000 payment are found in two teletypes, both dated October 24, 1979. These documents have been previously furnished to the Committee.

Sincerely yours,

Oliver B. Revell

Oliver B. Revell
Assistant Director
Criminal Investigative Division

Enclosure

EXHIBIT 28

STATEMENT
OF
ROBERT J. DEL TUFO

I am pleased to be with you this morning and wish to thank both the Subcommittee and Judiciary Chairman Rodino for the invitation.

I shall, with your permission, make certain observations about undercover operations, ABSCAM and related matters. In addition, I have annexed, as an appendix, to this Statement, a brief chronological account of the highlights of the District of New Jersey's involvement in ABSCAM while I served as United States Attorney. The chronology is relevant to my commentary and the subject matter.

I appreciate this opportunity to comment fully upon New Jersey's involvement in ABSCAM. It is the first that I have had. And I have been disturbed about the attempts of others, committed to the defense of ABSCAM at all costs, to denigrate New Jersey's actions by falsely ascribing selfish motivations to them. Nothing can be further from the truth, as the record will clearly demonstrate. New Jersey prosecutors, in seeking to discharge the considerable responsibilities assigned to them by the Department of Justice in ABSCAM, acted in the highest and best tradition of their calling by insisting upon pursuit of the investigation in a fair and just manner so as to ensure both the integrity of potential criminal prosecutions and the protection of individual rights and by alerting the Department to deviations from the norm. In the final analysis, the Department's hostile response to such internal dialogue and its potential impact upon other prosecutors is one of the most important matters before the Subcommittee. Prosecutors must feel free to speak their minds internally to their colleagues and superiors upon sensitive issues and matters of conscience. Unless rectified, the ABSCAM experience may have a debilitating, chilling effect in the future.

INTRODUCTION

At the outset, permit me to speak briefly of my former office and of the New Jersey personnel primarily involved with ABSCAM.

Over the years, the United States Attorney's Office for the District of New Jersey - which during my term was the fifth largest office in the country - established and maintained a national reputation as one of the most aggressive and effective prosecutorial offices in dealing with organized crime, political corruption and complex white collar frauds. With the Chairman's permission, I wish to make part of the record the Annual Reports of the office to the Attorney General for the years 1978, 1979 and 1980. The Reports describe in some detail the work of the office.

Messrs. Edward J. Plaza, Robert A. Weir, Jr., Robert C. Stewart and myself were the persons most directly involved in ABSCAM while I served as United States Attorney. Though you may already be acquainted with their background, Messrs. Plaza, Weir and Stewart are experienced, proven prosecutors who served with distinction in both federal and state law enforcement capacities.

Mr. Weir is an Assistant United States Attorney who served (and still serves) as Assistant Attorney-in-Charge of the Federal Organized Crime Strike Force for New Jersey. Before joining the Office in 1978, he had some seven years experience as a prosecutor and was in charge of a multi-agency unit staffed with both attorneys and investigators in the New Jersey State Division of Criminal Justice. The unit conducted undercover and other investigations in the drug traffic area.

Mr. Plaza served some four years in the office of former Manhattan District Attorney Frank Hogan and some nine years as an Assistant United States Attorney in Newark. He was appointed Chief of the Criminal Division by my predecessor and continued such service during my tenure until, in 1978, I promoted him to the position of Executive Assistant United States Attorney. Mr. Plaza has participated in, and has supervised, virtually every type of criminal investigation and prosecution. Over the years, he has received awards from the Department of Justice for excellence and professional achievement. In 1979, he received one of the highest awards given by the Department in recognition of his work in the 1978 successful prosecution of two Soviet spies, a case which I prosecuted with him and other staff attorneys.

Mr. Stewart, a Special Justice Department Attorney, served (and still serves) as Chief of the Organized Crime Strike Force in Newark. He had, prior to my recruitment of him to come to New Jersey, some thirteen years of law enforcement experience in both the federal and state systems and had established himself as a most skilled and effective prosecutor and administrator. Before coming to Newark, he was Chief of the Buffalo Organized Crime Strike Force where, over a three year period, he supervised a series of undercover operations involving theft and fencing, contract murder, arson for profit, and public corruption. He was also the attorney selected by the Department to oversee and coordinate the investigation into the disappearance of Jimmy Hoffa.

I personally have been involved in law enforcement over the last 20 years. I have served as an Assistant and a First Assistant County Prosecutor, as First Assistant Attorney General of New Jersey, as Director of New Jersey's Division of Criminal Justice and, of course, as United States Attorney for the District of New Jersey. I presently serve as a

Commissioner of New Jersey's State Commission of Investigation. The annexed biographical sketch states these matters in somewhat more detail. Parenthetically, the New Jersey Director of Criminal Justice oversees the activities of the twenty-one County Prosecutors and, through a staff of some 200 attorneys and investigators, conducts investigations and prosecutions of organized crime, white collar crime and political corruption. The State Commission of Investigation investigates similar matters in order to report to the public and to suggest legislative remedies.

1.

PROSECUTORIAL RESPONSIBILITY IN UNDERCOVER OPERATIONS

A few preliminary points demand comment:

(1) Undercover operations are an essential and proper law enforcement technique particularly in dealing with the more complex forms of criminal activity such as organized crime, white collar crime, drug trafficking and political corruption. They should, when properly conceived and administered, be pursued.

(2) Very often, use of unsavory and disreputable persons (such as a Mel Weinberg) is a necessary ingredient to a successful undercover operation. Because criminals who engage in the complex, usually conspiratorial offenses mentioned above, are

extremely reluctant to deal with strangers, the initial problem of infiltration is exceedingly difficult and frequently necessitates resorting to persons who have an entree to the underworld. Of course, the use of such informants always involves certain risks. The varieties of informant chicanery are legion and include self-dealing and overreaching. Investigators and prosecutors are expected to anticipate such problems and to forestall them through proper scrutiny and control. And, despite the many difficulties, law enforcement has on balance a rather commendable record with respect to the proper and effective utilization of informants in undercover operations. This is particularly true in New Jersey where the FBI, the State Police, the United States Attorney's Office and the Division of Criminal Justice have used the techniques regularly and effectively for some years.

(3) Sympathy should not be wasted upon the public officials convicted of crimes by virtue of ABSCAM. Regardless of possible inducements, regardless of the fact that some may have been deceived in various respects by Weinberg, their conduct stands as totally unacceptable and reprehensible. Each should simply not have participated in whatever scheme or charade was suggested. I believe we clearly have the right to expect the highest standards of conduct from our public officials.

(4) By the same token, we also have the right to expect such high standards of professionalism from law enforcement. In any criminal case, far more is involved than simply the possible successful prosecution of a criminal defendant. Always at stake is the very integrity of the system itself. And integrity is preserved only if criminal justice is actually administered fairly and honestly and if the public perceives and has confidence that the system is operating in such fashion. The prosecutor has the primary responsibility here. The burden lies at the very heart of law enforcement in this democracy. Prosecutors are enjoined to show contemporaneously both vigor and restraint, to conduct the pursuit relentlessly but fairly, always to wield authority with a due regard for the rights of others, and to view the broad interests of justice, not the transient appeal of conviction in any given case, as the polestar of official conduct. The value of constitutionally guaranteed rights is undercut when prosecutors fail to discharge this burden. Justice may arrive far too late, or far too depreciated, if protection of the individual must await the agony and expense of trial. During the critical investigative, pre-indictment phase, the vast power of the prosecutor is tempered largely by the sensitivity and restraint of the prosecutor himself. Individuals can be tarnished or destroyed if prosecutorial power is not exercised responsibly. As the representative of the sovereign, the prosecutor owes a duty to the citizenry

as a whole. The theme was well expressed by the United States Supreme Court in Berger v. United States, 295 U.S. 78, 88 (1935):

> "The United States Attorney is the representative not of an ordinary party to a controversy, but of a sovereignty whose obligation to govern impartially is as compelling as its obligation to govern at all; and whose interest therefore, in criminal prosecution is not that it shall win a case, but that justice shall be done."

In the context of an undercover operation, this command translates, among other things, into the responsibility to use various precautionary measures, such as: (a) Ensuring that the investigation properly monitors and controls the informant's activities; (b) Ensuring that there is a trustworthy factual basis for suspicion to believe that a person is in fact criminally predisposed before the apparatus of law enforcement is turned in his or her direction and thus before intrusive evidence gathering techniques are employed;* (c) Ensuring that putative suspects are not lured or induced into the commission of criminal acts by overbearing or devious stratagems.

Particular care must be taken when the government itself is creating a potential criminal event which would otherwise not exist. The conduct of an informant who infiltrates an on-going criminal enterprise is necessarily regulated to some extent by the very nature of the enterprise and the criminal activities of those who operate it. By contrast, this factor is absent in fictionalized schemes where a potential for inventive freewheeling exists and must be restrained.*

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* A standard requiring a "reasonable suspicion" that a criminal act will occur is often used as the threshold test for consensual monitoring. It is written into the New Jersey Electronic Surveillance Statute. The standard, which requires some real, though minimal, assurance, has worked well to accommodate both the needs of law enforcement and the protection of individual rights.

Control of the operation, whether a government fiction or an infiltration into actual criminal enterprise, requires continuous review and direction of the field operation by objective supervisory personnel. The ability to supervise depends upon access to reliable information as to developments in the investigation virtually on a day-to-day basis. Access, in turn, involves the use of simple, but basic, management practices such as ensuring the prompt availability of tapes, of transcripts of tapes, and of reports. The importance of oversight by supervisors cannot be overstated. Field operatives, affected by the hunt and their involvement in the operation, can lose the detachment and restraint required for reliable factual and legal evaluation of events and thus for structuring the investigation to prevent violation of individual rights and to ensure successful criminal prosecutions not jeopardized by claims of government misconduct or other error. Supervisors supply these ingredients.

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* For example, since the fiction is always subject to modification, a recalcitrant subject might ultimately be wooed across the line by increasing the monetary offer or other advantage to extraordinary heights and by simultaneously reducing or otherwise altering the quid pro quo to a level which may render moral responsibility somewhat ambiguous.

In my opinion, ABSCAM breached in many significant respects proper standards of professional responsibility as well as fundamental restraints and guidelines which should be abided in undercover operations. Moreover, its litigative history -- including the fact that lengthy and expensive post-trial due process hearings were required, that various federal district court and appellate court judges have reacted to it with some scathing language, that a heated debate on various issues was triggered in the press, that these hearings have been deemed necessary, and that similar hearings were deemed necessary by the Senate -- lead to the inescapable conclusion that, despite its impressive and unique record of convictions, a serious question exists as to whether ABSCAM has fostered public confidence in the integrity of the law enforcement system. The questions are: (1) What precisely was wrong with ABSCAM; (2) What exactly can or should be done to ensure that such problems do not reoccur?

2.

ADMINISTRATION OF THE ABSCAM INVESTIGATION

The problems with ABSCAM arose from the failure of the Department of Justice in Washington to insist upon adherence to recognized and well-established guidelines which govern the conduct of undercover operations and to see that effective control and direction of the investigation was exerted by responsible and experienced supervisory personnel.

ABSCAM, by its very nature and composition, posed a marked potential for mischief. It demanded close and continuous common sense scrutiny and control. ABSCAM was not, after all, an undercover inquiry into some actual on-going criminal event or enterprise such as narcotics trafficking or some organized crime endeavor. Indeed, it was not even an inquiry into suspected acts of existing political corruption. Rather, as it finally evolved, it constituted a proactive excursion to ferret out potential corruption by utilizing fictitious proposals conceived by the government itself. Within the parameters delineated by the Courts, the technique is legitimate and may sometimes be the only way to achieve results.* But use of the technique obviously demands great care in implementation. The need was heightened in ABSCAM when the government decided to use Weinberg, a convicted felon and con man extraordinaire, to implement the artifice. The danger which Weinberg posed was magnified significantly by the lack of supervision over him coupled with the apparent agreement to compensate him simply for succeeding in bringing marks before the camera and to bestow a bounty depending upon the importance of the office held by the target. In this environment, vast opportunities were opened for informant self-dealing and for overreaching, even by tricking or conning third persons into compromising situations, and there is evidence that Weinberg may well have acted in precisely this fashion. It was the Department's responsibility to bring Weinberg under control and to keep him under control. Despite admonitions from New Jersey, it failed to do so.

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* Bear in mind on the latter score, if you will, that, as stated above, some reasonable predicate for suspecting that a person will engage in criminal conduct should be a necessary prerequisite to targeting and pursuit. The known venality of an organized crime figure and his ongoing involvement in criminal enterprise will usually suffice as such a predicate but such information is often absent when the probe moves into business or political areas.

The Department did not install and maintain normal monitoring machinery. Of importance here was the failure to require prompt preparation and dissemination of transcripts of taped conversations so that supervisory personnel in Washington would have an accurate picture of events and could make sound judgments based upon what was actually happening.* This particular failure resulted in judgments being made upon the representations of Weinberg, and those closest to him in the field, as to what had occurred. All too often, however, these representations did not accord with the actual facts when, through transcripts of conversations or other information, they became known months later. A related matter was the extraordinary amount of freedom improperly afforded Weinberg. He was alone, unobserved and unsupervised by law enforcement officials for substantial periods of time. An array of unrecorded conversations, of false reports, and of interrupted, altered, partially erased or "lost" tapes are a demonstrative product of his independence. There is evidence that Weinberg used his freedom to benefit himself in a variety of ways including the acceptance of gifts and the conduct of criminally fraudulent reverse scams against the government.* As the "coaching" incidents of which we are aware attest, the absence of proper supervision also enabled him to attempt to con persons into making compromising statements on camera by urging off camera that the statements were substantively meaningless, the "arab way," and simply a script to satisfy the Sheik's expectations.**

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* Mr. Puccio, when serving as supervisory field prosecutor, could have made a difference. He recognized the problems and New Jersey prosecutors continued to emphasize them to him. But he refused to insist that corrective action be taken.

Another problem was the inexperience of Mr. Nathan, who commanded a critical position throughout ABSCAM. Despite his considerable talents, decision making in the criminal justice system requires experience, which he did not have. He was simply unable to discharge effectively the supervisory responsibility thrust upon him and to take the steps necessary to ensure that ABSCAM and Weinberg functioned properly. In this connection, the absence of control and the deficiencies in monitoring machinery were noted by Messrs. Plaza and Weir immediately upon their introduction to ABSCAM during April and May of 1979.* Repeatedly between May and July, we discussed the issue with the Brooklyn prosecutors but there was no improvement. During a meeting in Washington on July 18, 1979, I called the matter to the attention of Mr. Heymann, Mr. Nathan and other senior officials. And later, on September 12, these concerns were formally addressed in a detailed, seven page Memorandum from Mr. Stewart to the Chief of the Organized Crime Section. By then, of course, we had discovered, and communicated, Weinberg's coaching of Senator Williams and our concerns intensified over the viability of future prosecutions and over possible violations of constitutional rights. In response, the Department through Mr. Nathan did attempt to structure some order and control. Coaching was forbidden and directions were issued to improve housekeeping details, but the commands were honored by field personnel in Brooklyn in the breach and almost never in the observance.* Both orally and in writings over the next four months we continued to advise Washington of the problems. We pointed out that, in fact, nobody except Weinberg or those closest to him had or could get an accurate picture of what was actually happening in ABSCAM, that control mechanisms were required, that requisite factual predicates for investigative action against particular individuals were not being delineated and that Weinberg's actions had the potential to create problems and offend civil liberties. Yet, nothing changed. Washington lacked either the resolve or the ability to take charge and see that its orders were obeyed.

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* There is evidence that Weinberg received a substantial portion of the $100,000 passed to Errichetti on March 31, 1979 in the MacDonald matter and that he, himself, was the source of the fraudulent certificates of deposit for whose "recovery" he was financially rewarded by the Department of Justice.

** Again, I have little sympathy with those who demean themselves by agreeing to follow the script. But the focus here is not on them but on law enforcement and whether it should be behaving in this fashion.

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* The most conspicuous of these included Weinberg's failure to record certain conversations, the absence of timely reports memorializing significant events and unrecorded encounters, the unavailability of tapes and transcripts of tapes, the absence of logs of telephone contacts and of a chronological summary of past events, and a lack of on-going, in-depth analysis of relevant facts.

Similarly, main Justice was also unable to enforce its own orders directing ABSCAM into areas which it had designated as the main priority. In July of 1979, largely because of the significance of the casino industry to New Jersey and the nation, Messrs. Heymann and Nathan on their own initiative designated New Jersey as the primary target area of ABSCAM with particular reference to possible organized crime incursions and political corruption in Atlantic City.* They ordered Mr. Stewart and me to manage the inquiry and directed the field personnel to orient their attention accordingly. The directive was restated and reemphasized by Mr. Nathan at a September 13, 1979 meeting in Washington, confirmed by him in writing by memorandum of October 5, 1979, and restated on numerous subsequent occasions. The command was never followed and the selected target area was never explored. The field simply ignored or evaded the command.

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* The Williams coaching incident may, in retrospect, have been a decisive event. It was, to my knowledge, the first time this Weinberg technique came to the attention of New Jersey prosecutors and Department personnel in Washington. On August 9, Mr. Plaza properly counseled Weinberg against coaching. And senior Department personnel properly reacted with great concern to such tactics and directed that the activity stop. The directive was not enforced. There was, after all, no effective Departmental supervisory oversight in place and the field was in the driver's seat. Thus, the initial response of the FBI case agent and the FBI undercover operative on August 9 to Mr. Plaza was to express regret that the coaching had been taped and to eschew recording such incidents in the future. And on October 4, the case agent denounced Mr. Plaza for having admonished Weinberg about coaching and took the position - one apparently supported at least sub silentio by the Brooklyn prosecutors - that Plaza's rebuke had "offended" Weinberg and thereby jeopardized the investigation. Weinberg was thus allowed free rein and, in a classic example of the tail wagging the dog, may have largely determined the future course and nature of ABSCAM. Obviously, Weinberg should have been brought under control. And had this occurred, the ills of ABSCAM might largely have been avoided.

The failure of main Justice to supervise ABSCAM properly left the field unsupervised and in charge of its own day-to-day affairs.** And, in my opinion, the field was simply not interested in controlling Weinberg and in putting the necessary monitoring machinery in place. They gambled that Weinberg's style would produce spectacular results and were not concerned about the means he might employ to achieve them. Washington regrettably was unable or, ultimately, unwilling to interfere and enforce its own decrees.

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* Potential organized crime and political corruption targets elsewhere in the State were to be part of the effort. In addition, the investigation was also to evaluate Errichetti's claims that legislators he identified were corrupt.

** The problems which lack of field objectivity can engender have been discussed above (see page 9). The reported literary ambitions of some of the field personnel make the situation far more egregious. The pot of gold in book sales depends upon results, not necessarily how those results are achieved. In any event, such ambitions would - consciously or unconsciously - clearly upset the sensitivity with which day-to-day investigative and prosecutorial judgments must be made.

Thus, ABSCAM ended with a host of troubling loose ends i.e., a multitude of unrecorded conversations, the "lost" tapes, the controversy over Weinberg's gift receiving, evidence that Weinberg misappropriated a substantial portion of the $100,000 passed to Errichetti in the MacDonald matter, evidence that Weinberg actually was the source of the certificates of deposit he supposedly recovered and for which he received a monetary reward from the Department, the intense debate over Commissioner MacDonald's knowledge and intent at the time Errichetti accepted the suitcase of money, questions about the propriety of the "bounty" system, the disturbing implications of Weinberg's egregious retort that if he did not put words in people's mouths there would not be any cases, the case agents' insistence that Plaza's admonition to Weinberg to stop coaching had "upset" Weinberg to the point of "jeopardizing" the investigation and should not be repeated, the monumental pre-indictment press extravaganza, and eventually real concern about the integrity of the videotape evidence.

All of this is not proffered in defense of those who, in disregard of the dignity of their office, conducted themselves in a despicable manner once before the camera. They are being dealt with by the courts, and their conduct is not in issue here. What is in issue, unfortunately, is whether law enforcement conducted itself properly. Obviously it could have, and should have, been better. And, in my judgment, there is no reason why ABSCAM could not have achieved sound results without engendering a national debate over the wisdom and propriety of the undercover technique and, concomitantly, undermining public confidence in the integrity of the law enforcement system. There is nothing mutually exclusive about getting excellent investigative results while, at the same time, adhering to the highest possible standards of professional responsibility. On the contrary, the best results are achieved when there is no "corner-cutting." It may take longer; and it may be more difficult. But the quality of the end product will be better and the public will be satisfied that justice has in fact been done and been done by fair means.

3.

THE DEPARTMENT OF JUSTICE: RESPONSE TO INTERNAL COMMENT

During the covert phase, New Jersey was interested in seeing that ABSCAM was being administered and conducted in a proper manner and that the investigation was in fact oriented in accordance with priorities established by the Department.* The objectives were pursued: (a) by suggesting as early as April and May of 1979 that normal and proper oversight practices to monitor the undercover operation be put in place and that Weinberg be controlled; (b) by continuing to press for objective, supervisory oversight of the investigation by Department personnel; (c) by calling critical attention to Weinberg's techniques when we were able to ascertain the true circumstances, usually well after the event; (d) by preparing, at the Department's request, memoranda analyzing the facts and the law in specific cases, particularly those involving Senator Williams and Commissioner MacDonald;* (e) by continuing to request the Department to enforce its own directive that ABSCAM focus priority investigative attention upon identified organized crime and political corruption subjects in the casino industry and elsewhere in New Jersey.

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* The former objective involved not only a sensitivity to law enforcement's obligation to protect individual rights and to foster public confidence in the system, but also pragmatic concerns about not placing future prosecutions and convictions in jeopardy with overreaching.

The Department initially reacted with some concern and orders for reform. However, when Mr. Nathan's directives in this regard were ignored in the field, he failed to act decisively. The result, in essence, was that the Department was carried along by the Weinberg-field wave until matters were beyond control or repair. And, as this happened, the Department's attitude toward New Jersey became increasingly more hostile. The situation became more acute after conclusion of ABSCAM's covert phase when, largely due to the egregious media leak, the Department was forced to defend ABSCAM before the Congress and the public* and decided to commit itself to the pursuit, without qualification, of a program of indictment.[*] That attitude ultimately translated into Departmental assaults designed, improperly and unfairly, to discredit the New Jersey concerns and the integrity of its efforts. The most egregious example of this approach is the Nathan memorandum of January 6, 1981.

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* Such memoranda were solicited of me by Mr. Nathan in conversations which occurred as early as August of 1979. The requests were confirmed in writing by his memorandum of October 5, 1979.

* The defense included denials of management deficiencies and claims of close, day-to-day supervision of the investigation from Washington.

The memorandum in question was prepared after receipt of a December, 1980 internal memorandum from Messrs. Plaza and Weir alerting the Department to possible misrepresentations and suppression of facts by Weinberg and others in government testimony during ABSCAM court proceedings. The Nathan response contains falsehoods in the course of a premeditated effort to harm the reputations and credibility of New Jersey prosecutors.[**] Eschewing the internal communication chain which New Jersey had at all times stringently followed, the memorandum was circulated to defense counsel and the Courts and was leaked to the press in Washington on the day of its external distribution. Reference to certain of its falsehoods should serve to illustrate the calumnious effort. The very first paragraph recites alleged conversations with Plaza, Weir and myself during the summer of 1979 concerning alleged mundane arguments from New Jersey as to why it should participate in ABSCAM. It later asserts that Plaza and Weir did little work on their assignments. Each of these assertions is untrue. Neither Mr. Plaza nor Mr. Weir ever spoke with Mr. Nathan about ABSCAM until some time in 1980, at least six months subsequent to the time cited by Nathan. New Jersey's involvement in ABSCAM was at the express invitation of the Department. New Jersey's role was expanded by Messrs. Nathan and Heymann on their own initiative.* Moreover, Mr. Nathan's assertion as to the alleged inactivity of Mr. Plaza and Mr. Weir is not only patently untrue but also, quite frankly, scurrilous. As Mr. Heymann has finally acknowledged publicly** Messrs. Plaza and Weir did vast amounts of work. And Mr. Nathan well knew this to be the case at the time he authored his memorandum.

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[*] In or about April of 1980, Mr. Nathan improperly began to exert pressure upon me to seek the immediate indictment of Commissioner MacDonald simply upon the basis of the videotape evidence and notwithstanding that the record was ambiguous on the question of criminal intent and otherwise incomplete. My refusal served to fuel his hostility.

[**] As Mr. Heymann testified before you, the Nathan memorandum was prepared with the intention of external distribution (pp. 35-37). The inclusion of the false assault upon New Jersey prosecutors can only be viewed as such an effort to denigrate and discredit.

The Nathan memorandum illustrates a sad and seedy facet of ABSCAM. But it is far more than a sidelight. As a manifestation of the Department's tragic reaction to internal comment, it constitutes a very dangerous and unfortunate precedent. Prosecutors should feel free to express themselves through proper channels upon sensitive issues and should have no hesitancy to offer dissenting views. Only in such an atmosphere will those who bear the burden of making ultimate decisions have the healthy benefit of various and different points of view. Only in such an atmosphere will possible investigative irregularities be identified and hopefully corrected before the viability of potential prosecutions or individual rights are endangered. All of New Jersey's comments were communicated internally with a constructive objective and intent. Yet, due to the false and calculated effort to do harm, New Jersey prosecutors paid an unwarranted and severe price for their candor and dedication. The leaked memorandum, as well as testimony based upon it and upon other untruths or distortions, found their way into the media and into Court proceedings, proceedings in which New Jersey personnel, as non-parties, had no opportunity to defend themselves.* This graphic experience will inevitably have a chilling effect upon others in the future who might consider expressing themselves to their superiors, candidly and internally, upon matters of controversy or consequence. This is most regrettable and could conceivably be the most alarming and deleterious legacy of ABSCAM. For if the Departmental response and the New Jersey experience silences concerned, dedicated prosecutors in the future, we shall have lost as a society a major bulwark to the protection of individual liberty and to ensuring that law enforcement activities will be conducted vigorously, but fairly, and to a successful, unimpeachable conclusion. This Subcommittee could help to avert such a deleterious result by analyzing the entire record and correcting it where appropriate. A judgmental comment by such an important and impartial body would work to correct the damage and to prevent a repetition. In this connection, a full factual review by the Department's Office of Professional Responsibility has, I am advised, reached the conclusion that New Jersey prosecutors conducted themselves professionally throughout ABSCAM, in contrast to the Nathan memorandum and other Department activities. Its report may be of assistance to the Subcommittee in any such oversight effort.

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* On July 18, 1979, as confirmed at a further meeting on September 13 and by Nathan memorandum of October 5, Messrs. Heymann and Nathan designated New Jersey (principally its casino industry) as the priority investigative area with Mr. Stewart and myself as supervisors. The record clearly belies Mr. Nathan's false version of New Jersey's entry into ABSCAM.

** See testimony of Mr. Heymann before the Subcommittee, June 3, 1982, p. 66.

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* The Nathan suggestions found their way into Judge Pratt's decision in the Myers, et als. due process proceeding. This was most regrettable and inappropriate. The question of internal disagreement was not an issue in the proceeding. The gratuitous remarks of the Court, obviously generated in large measure by the false Nathan assertions, were thus comments upon non-issues on an incomplete record as to defenseless non-parties and unusually inappropriate.

4.

THE DEPARTMENT OF JUSTICE: INVESTIGATION OF ALLEGATIONS OF INTERNAL MISCONDUCT

The Department of Justice has shown a seeming unwillingness to pursue in a professionally recognized manner allegations and other information of possible misconduct by Weinberg and other government employees. When information concerning possible perjured testimony at ABSCAM trials was brought to the Department's attention in December of 1980, it did not seek an investigation by an independent body, such as the Office of Professional Responsibility. Instead, it assigned the task to the Brooklyn

Strike Force which had a vested and vital interest in the outcome. And, faced now with significant information that Weinberg may have engaged in criminal acts during the course of ABSCAM -- i.e., by receiving a substantial portion of the $100,000 passed to Errichetti in the MacDonald matter, by accepting gifts from targets and denying the fact in sworn testimony, and by accepting a reward for the recovery of counterfeit certificates of deposit when he in fact was the source of the certificates -- the Department has not, to my knowledge, initiated a meaningful, independent inquiry to determine the relevant facts and to pursue appropriate remedies, including criminal prosecution, if and as circumstances warrant.

A law enforcement agency should be willing to clean its own house. It should have the resolve to evaluate objectively charges of impropriety and, in colloquial parlance, to let the chips fall where they may. Unfortunately, this may simply be too much to ask when, as with ABSCAM, the stakes are high and the consequences of successfully pursuing informant or other employee misconduct are potentially vast. The Subcommittee should consider recommending to the Department of Justice that clear and effective internal rules and regulations be promulgated to mandate and guarantee that serious allegations of impropriety by Department informants and employees are objectively investigated by an impartial, independent agency. With respect to ABSCAM, however, such a remedy comes far too late and would be meaningless. In view of the unique circumstances, coupled with the

Department's demonstrated lack of resolve and the gravity of the allegations of wrongdoing, I suggest that the Subcommitte propose whatever legislative or other action is necessary to appoint a Special Prosecutor to investigate charges of criminal misconduct by Weinberg and others.

CONCLUSION

As stated at the outset, one of the most important issues before the Subcommittee is the potential future chilling effect which the Department's false assault upon New Jersey has engendered. And one of the most important matters which the Subcommittee can and should undertake is to dispel this possibility by reviewing the full and complete record of ABSCAM which, I assure you, fully supports the professionalism of New Jersey prosecutors.* For that matter, a proper evaluation of ABSCAM cannot be achieved absent access to all relevant information. The Department's selective disclosure to date is inadequate. The reluctance to disclose is puzzling and alarming. The observation of Justice Brandeis in another context certainly extends to the present situation: "Publicity is justly commended as a remedy for social and industrial diseases. Sunlight is said to be the best of disinfectants; electric light the most efficient policeman." (Brandeis, Other People's Money, p. 62). I appeal to the

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* Such a full and complete review is also of obvious importance in your assessment of the credibility of witnesses who have appeared before you.

Subcommittee to take whatever steps are necessary to obtain and to review all information in the Department's files.

I also call upon the Subcommittee to propose whatever legislative or other action is necessary to mandate the appointment of a Special Prosecutor to investigate allegations of criminal conduct by Weinberg and others during ABSCAM. The Department should also be counseled to establish objective, workable, effective investigative procedures when allegations of serious misconduct are lodged against informants or other government employees. The only alternative would be consideration of a Special Prosecutor in such circumstances as well.

In my view, ABSCAM was an abberation. But it is one which could occur again. Given similar circumstances of inexperience and ineffectiveness at the supervisory helm coupled in the field with poor judgment, insensitivity to prosecutorial responsibility, over-zealousness, and lax control over a skillfully corrupt and corrupting informant, ABSCAM could have a second run. How to guard against such a repeat occurrence? The question is virtually impossible to answer except in terms of prosecutorial self-discipline; and this in turn hinges upon the quality and resolve of the people operating the law enforcement apparatus.

Nonetheless, there are steps to lessen the odds of a repetition. It is assuredly reasonable to insist in the future upon unqualified adherence to usual and common sense management techniques in undercover situations such as supervision of the field by objective supervisory personnel, strict control of the informant, and the installation and maintenance of surveillance and other tools necessary to the effort.[*] Moreover, the outrageous bounty system of compensation to crooks and conmen should be condemned and prohibited.

When one reflects upon it, there is simply no excuse or justification for not keeping an informant under control. And there is no excuse or justification for failing to memorialize and document in timely fashion every meeting and every event in the course of an investigation. Constitutional rights to one side, such basic practices preserve the integrity of the investigative process and of subsequent prosecutions. And the recklessness of not insisting upon such measures when a hired conman is operating under an improper contingent fee arrangement is patently obvious.

In addition, thought should be given to establishing some threshold standard before, as Mr. Heymann stated to you in apparent concurrence[**], the apparatus of law enforcement and its electronic capacities are turned loose upon an individual. The rights, privileges and expectations of citizenship in this

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[*] In Title III situations, complete logs and other information concerning conversations must be stringently compiled and preserved to demonstrate minimization. Like requirements could appropriately attend undercover operations where Government created crimes or fictions are involved in order to insure availability of a full record to aid supervision and to protect civil liberties.

[**] Heymann testimony, pp. 39-41.

Republic demand such consideration. In ABSCAM, as was repeatedly suggested by New Jersey to the Department from the summer of 1979 on, the intermediaries should have been probed for more precise information about the reason for believing that a particular official was corrupt. Asking the question, "How do you know?" is the common method by which investigators verify information for other investigative purposes, such as search and seizure and wiretaps. Its use would not have inhibited ABSCAM and could have prevented electronic intrusion into the lives of persons about whom the middlemen lied.

As a cautionary final comment, I respectfully request that you guard against the inclination to over-react against ABSCAM. In the final analysis, I hope ABSCAM's serious lapses in the discharge of prosecutorial responsibilities will not cause you to burden law enforcement with restrictions which would operate to the detriment of the thousands of honest and dedicated prosecutors and investigators who act properly and effectively and will continue to do so. Society would clearly lose in the process. Only in recent years has law enforcement demonstrated the resolve and ability to deal effectively with organized crime, political corruption and white collar crime. Continuation of the effort must be encouraged, not deterred or hampered. In this connection, the use of covert operations has proven to be an indispensable tool in detecting and pursuing these most sophisticated forms of criminal activity. Law enforcement has largely demonstrated an ability to use it in a responsible and controlled way. The technique should not be lost, or its efficacy diminished or impaired, because of the problems of ABSCAM.

ROBERT J. DEL TUFO

ACADEMIC BACKGROUND:

Secondary: Newark Academy, 1951

Undergraduate: Princeton University, A.B. Cum Laude in English, 1955

Graduate: Yale University Law School, LL.B., 1958 Order of the Coif; Editor, Yale Law Journal

CURRENT PROFESSIONAL AFFILIATIONS:

Member of the law firm of Stryker, Tams & Dill, Esqs., 33 Washington Street, Newark, New Jersey, and 55 Madison Avenue, Morristown, New Jersey

Commissioner, New Jersey State Commission of Investigation, Trenton, New Jersey

PRIOR GOVERNMENT SERVICE:

United States Attorney for the District of New Jersey, 1977-1980

As United States Attorney for the District of New Jersey, Mr. Del Tufo was responsible for the representation of the Federal Government in both criminal and civil causes in the State of New Jersey and supervised a staff of 62 Assistant United States Attorneys and 10 Special Attorneys assigned to the Newark Federal Organized Crime Strike Force.

First Assistant Attorney General, State of New Jersey, 1974-1977.

Director of the Division of Criminal Justice, 1976-1977.

As First Assistant Attorney General, Mr. Del Tufo served as second in command of the Department of Law and Public Safety which is headed by the Attorney General. The Department itself had approximately 6,000 employees, and an annual budget of some $100 million. It was composed of nine divisions: Criminal Justice; State Police; Law; Gaming Enforcement; Consumer Affairs; Civil Rights; Alcoholic Beverage Control; Motor Vehicles; and Systems and Communications.

In January of 1976, in addition to First Assistant duties, Mr. Del Tufo assumed responsibility for operation of its Division of Criminal Justice. As the Attorney General's representative, the Director exercised the significant criminal jurisdiction of the New Jersey Attorney General which includes prosecutorial responsibilities in the areas of organized crime, public corruption, anti-trust and white collar crime, supervision of witness immunity matters and the electronic surveillance program, and supervisory control over the 21 county prosecutors.

Member (as Attorney General's representative), New Jersey Sports and Exposition Authority, 1974-1977.

Member, New Jersey State Board of Bar Examiners, 1968-1974.

Member, Board of Directors, New Jersey Educational Opportunity Fund, 1968-1971.

First Assistant Prosecutor, Morris County, 1965-1967; Assistant Prosecutor, Morris County, 1963-1965.

Law Secretary to Chief Justice Joseph Weintraub, New Jersey Supreme Court, 1958-1960.

PRIOR LAW PRACTICE:

Associate (two years) and member (eleven years) of a Morristown, New Jersey, law firm (Jeffers and Dillon) with emphasis on business, tax, regulatory, trial, appellate and local government agency practice, 1960-1974.

PROFESSIONAL (GENERAL):

Bar Admission: New Jersey, 1959; United States District Court (New Jersey), 1959; United States Supreme Court, 1979.

Activities: Fellow, American Bar Foundation, 1975-present.

Member, Criminal Law Drafting Committee, Multi-State Bar Examination, National Conference of Bar Examiners, 1972 - present.

Member, Committee on Character (New Jersey Supreme Court), 1982 -

Member, Essex County Judicial Selection Committee, 1982 -

Member, Editorial Board of New Jersey Law Journal, 1977 - present.

Chairman, Advisory Board, Rodino Institute of Criminal Justice, Jersey City State College, 1977 - 1981; Member of Board, 1981 - present.

Member, Executive Committee, Yale Law School Association, 1978 - present.

Member, United States Attorney General's Advisory Committee of United States Attorneys, 1978 - 1980.

Professor, Criminal Law Subjects, Rutgers University School of Criminal Justice, 1979 - 1981.

Instructor, Business Law - Fairleigh Dickinson University, 1964.

Member, Law Enforcement Advisory Committee, County College of Morris, 1970 - 1982.

Member, Morris County Ethics Committee, 1968 - 1971.

Member, Morris County Judicial Selection Committee, 1970 - 1972.

Bar and Professional Associations:

Member, Morris County, New Jersey State and American Bar Associations.

Member, National District Attorneys' Association.

CIVIC ACTIVITIES:

Member, Board of Trustees, Newark Academy, 1977 - present, (Vice President, 1979 - present).

Member, Board of Regents, St. Peter's College, 1980 - present.

Chairman, American Heart Association Attorney Campaign, 1982.

Vice-President (1970) and member of the Executive Committee, United Fund of Morris County, 1966 - 1970.

Member, Board of Directors, National Foundation, March of Dimes, 1966 - 1968.

Member, Board of Directors, Visiting Nurse Association of Morris County, 1963 - 1970.

Member, Board of Directors, Morristown YMCA, 1970 - 1974.

Chairman, Morris Township Juvenile Conference Committee, 1963 - 1974.

PUBLICATIONS:

"Recovery for Prenatal Torts: Actions for Wrongful Death," 15 Rutgers Law Review 61 (1960).

"Sunday Closing and the Police Power," New Jersey Law Journal (1959) (co-author).

Note, "Non-Communist Affidavits by Union 'Officers' under Taft-Hartley Section 9(h); A 'Constitutional' Versus a Functional Test," 66 Yale Law Journal 771 (1956).

"The Bar: Commitment to Social Justice," 14 New Jersey State Bar Journal, 8 (#53, Fall 1970).

"Future Projections in the Criminal Justice System," 24 Law and Order, 86 (No. 9 1976).

"Biting the Handgun Bullet," New York Times, Sunday, October 3, 1976, Section 11, p. 26.

APPENDIX I

ABSCAM - CHRONOLOGY
2/28/79 - 9/15/80

COVERT PHASE

New Jersey became involved in ABSCAM during the Spring of 1979 at the invitation of the Department of Justice.

On February 28, 1979, following a telephone call to me, I met with Thomas Puccio, Chief of the Brooklyn Organized Crime Strike Force, at the United States Attorney's Office in Newark, New Jersey. Also present at the meeting were Robert C. Stewart, Special Justice Department Attorney in Charge of the Newark Organized Crime Strike Force, William W. Robertson, First Assistant United States Attorney, and Thomas Emery, Special Agent in Charge of the New Jersey FBI. Mr. Puccio advised that Mayor Errichetti had claimed to undercover operatives that he was in a position to influence corruptly members of the Casino Control Commission and particularly Commissioner Kenneth MacDonald. Mr. Puccio described briefly events to date and indicated that Mayor Errichetti had already received a $25,000 payment. He stated that further meetings to assess Mayor Errichetti's assertions were being planned. I thanked Mr. Puccio for the information and asked him to keep me advised of developments.

Thereafter, I spoke with Mr. Puccio several times by telephone. He told of further events including a possible meeting to be held in Long Island with Mayor Errichetti, Commissioner MacDonald and FBI Special Agent McCarthy (posing as Abdul employee McCloud) in attendance. Mr. Puccio also advised that the name of Senator Harrison Williams had arisen and sought information about him. He indicated that a Florida meeting of the operatives with Senator Williams and Mayor Errichetti was possible. The meeting in fact occurred on the "Sheik's yacht" on March 24.

On March 26, during a Strike Force Chief's meeting in Washington, Mr. Puccio met with Mr. Stewart and Philip B. Heymann, Assistant Attorney General in charge of the Criminal Division. At the March 26 meeting other ABSCAM matters were discussed. Messrs. Heymann and Puccio believed it desirable to have Newark participate in ABSCAM to obtain the benefit of its thinking and of information about New Jersey figures. It was agreed that a meeting would take place in Brooklyn as soon as possible.

On April 4, Mr. Stewart and I visited the offices of the Brooklyn Strike Force and met with Mr. Puccio. We discussed the March 31 meeting in Long Island when "McCloud" passed an attache case containing $100,000 in cash to Errichetti while Commissioner MacDonald was present in the room. Mr. Puccio advised us that, at a taped luncheon meeting afterwards, MacDonald had made incriminating, corrupt statements and had sought future employment for his son-in-law and himself with Abdul's casino.* We discussed the matter involving Senator Williams. We also examined a New Jersey Legislative Manual which Errichetti had given to Weinberg and in which he had placed a check mark next to the picture of those legislators whom he claimed would enter into corrupt arrangements. Mr. Stewart and I supplied information about certain of the legislators identified by Errichetti. We discussed the future conduct of the investigation and agreed that it would be pursued in a systematic way with the active participation of attorneys from both Brooklyn and New Jersey working in a joint, cooperative fashion.

Edward J. Plaza, Executive Assistant United States Attorney and Robert A. Weir, Jr., an Assistant United States Attorney serving as Assistant Attorney in Charge of the Newark Strike Force, were assigned as New Jersey's representatives. They visited Brooklyn to familiarize themselves with the file and to commence working with Brooklyn Strike Force attorneys Jacobs and Sharf. Soon thereafter, Messrs. Plaza and Weir identified certain problem areas which they called to the attention of Mr. Stewart and myself as well as to the attention of the Brooklyn Strike Force. In essence, the Newark prosecutors noted the absence of meaningful controls of Weinberg and of the normal machinery to insure such control. Among the matters identified were the following:

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* As will also be mentioned later in this chronology, the tape proved to be inaudible and not capable of enhancement. It was not until March or April of 1980 that Special Agent Amoroso stated that MacDonald had not made corrupt or incriminating statements at the luncheon.

1) FBI 302 summaries or other reports of various events, including unrecorded conversations, were lacking. In addition, a significant number of taped conversations had not been transcribed or otherwise memorialized. Such documentation is essential to systematic, meaningful review of the progress of an investigation both by people in the field and by their supervisors.

2) No written chronology of pertinent events was being maintained. Such a running account is important to case management and aids in the preparation of a supporting affidavit should a Title III electronic surveillance application prove necessary.*

3) A complete log of telephone communications was not being maintained. A number of conversations were unrecorded and certain tapes were either interrupted or did not start at the beginning of a conversation. Those and other circumstances suggested that Weinberg was being selective, thereby raising the possibility of duplicity on his part and calling for tighter controls over him and his activities.

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* Though, sometime in May, Mr. Puccio assured Mr. Stewart and me that he had directed Mr. Sharf to prepare and maintain a chronology, none was, to my knowledge, ever written. Over the months, various Title III projects were suggested by us, particularly with reference to Errichetti. Review of his conversations with third parties could, we pointed out, provide investigative leads and throw light upon on-going criminal conspiracies attended to by Errechetti during the undercover activity.

4) Legal research on various Travel Act, Hobbs Act and other federal criminal law questions was required in order to properly orient the undercover operatives in their dealings.

Messrs. Plaza and Weir suggested that the deficiencies be remedied. Their identification of the problems prompted Mr. Stewart and I to meet with Mr. Puccio in Brooklyn on May 11. We urged the same reforms -- i.e., prompt preparation and dissemination of transcripts, of 302s and of other reports of events, maintenance of a written running chronology, maintenance of a telephone log, full and complete recordation of all conversations, closer oversight and control of Weinberg and his activities, and the conduct of legal research. Mr. Puccio expressed reservations, particularly over the control issue concerning which he eschewed "over-management" and indicated a preference to leave the operatives to their own devices without close prosecutorial oversight. Ultimately, however, he indicated concurrence with the suggestions and renewed the pledge to have our respective attorneys work with the FBI case agent John Goode and the operatives to develop a plan by which all leads might be pursued.*

The remedial management controls necessary to proper evaluation of the investigation and to proper supervision of

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* I met again with Mr. Puccio later in the month, in the company of Mr. Robertson, to urge again proper management and office cooperation and again he pledged his support.

Weinberg were, however, not established although the situation was called repeatedly to Mr. Puccio's attention. Moreover, Messrs. Plaza and Weir were soon denied by Mr. Puccio any meaningful access to information. When Mr. Plaza and Mr. Weir described to me their fruitless trips to Brooklyn, I would contact Mr. Puccio. Typically, he would either deny the existence of a problem or assure me that any difficulties would be promptly remedied. In view of his comments, I would typically send Messrs. Plaza and Weir back to Brooklyn with instructions to continue to work to develop a cooperative arrangement.

Nothing fruitful occurred during May and June. On July 9, Messrs. Plaza and Weir, while again visiting the Brooklyn Strike Force offices, were told by Mr. Puccio: that meetings between prosecutors from Brooklyn and New Jersey were not productive; that New Jersey should not be concerned about analysis of legal issues since he was personally monitoring the investigative progress on a daily basis with case Agent Goode; that the presence of New Jersey attorneys disrupted his method of investigation; and that the investigation should be terminated soon because its continuation enabled Commissioner MacDonald to remain in a position of public responsibility. When Messrs. Plaza and Weir returned to the office and advised me of this conversation, I contacted Mr. Puccio and met with him in Manhattan on July 11, 1979. Though it was clear that he had made those statements to my attorneys, Mr. Puccio insisted that he had not and renewed his pledge to pursue a cooperative investigation. In view of what had transpired over the past months, I took certain additional steps to try to insure that the investigation would continue and that a cooperative venture would become a reality. I wrote to Mr. Puccio on July 13, 1979 expressing my concern that the investigation might languish or even be concluded prematurely without realizing its maximum potential. I asked for a meeting with him and with the Special Agents in Charge of the Newark and New York FBI offices on Monday or Tuesday, July 16 or 17, in order to establish an understanding as to the future course of action to be pursued. I also advised him that I wished to review the situation with Mr. Heymann and other officials in Washington on Wednesday, July 18.* My letter of July 13 went on to summarize certain past events. I indicated that at our meetings over the last three months I had stressed the importance to the citizens of New Jersey and to the Federal Government of pursuing the investigative opportunity in a systematic and comprehensive way. I advised him that I thought it imperative to participate with the FBI in the development of a plan by which, to the maximum extent possible, public officials identified as corrupt would be given an opportunity to demonstrate their violation of the public trust. I pointed to a number of specific suggestions and proposals for gathering evidence which had been assembled by my staff and pointed to the fact that, notwithstanding such action, little progress had been made to devise and agree upon a comprehensive plan to pursue the investigation. I went on to say that any suggestion of premature termination of the probe was unacceptable.

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* I had also contacted then Deputy Attorney General Benjamin Civiletti and had acquainted him with the problem. He had suggested a discussion with Mr. Heymann to work out the details of a cooperative arrangement if one could not be voluntarily agreed upon by the parties. Mr. Civiletti indicated that forging such arrangements was not uncommon.

Mr. Puccio contacted me by telephone on July 16, 1979 in response to my letter. I generally outlined once again the parameters of what we had previously agreed would constitute our cooperative venture. I confirmed the outline by letter of July 17, 1979. The letter, which was delivered to Mr. Puccio, suggested that: attorneys from both offices jointly participate in and supervise the investigation; that an investigative plan be developed by the attorneys with FBI representatives including Mr. Goode; and that every effort should be made to maximize the investigative potential and to insure that it neither languished nor prematurely terminated. When Mr. Puccio declined to acknowledge the plan, Mr. Stewart and I visited Washington on July 18 for a meeting attended by Mr. Heymann, Irvin Nathan, Deputy Assistant Attorney General who had been placed in charge of ABSCAM by Mr. Heymann, David Margolis, Chief of the Organized Crime Section, Mr. Gerald McDowell, Deputy Chief of the Organized Crime Section, Mr. Puccio and Mr. Edward Korman, United States Attorney for the Eastern District of New York.

At the July 18, 1979 meeting I urged: that the investigation not be prematurely terminated and that all leads be vigorously and systematically pursued; and that the investigation be undertaken in a truly cooperative manner with attorneys from both the Brooklyn Strike Force and Newark working together. I emphasized my view that the cooperative approach was the proper one because of the Brooklyn Strike Force's participation in ABSCAM from its inception, because of the good working relationships which it had developed with the case agent and FBI personnel, and because of the obvious need to have New Jersey participate in the investigation of New Jersey public officials and organized crime elements. Mr. Puccio opposed the cooperative plan, indicating his objection to what he termed "management by committee", and insisted upon exclusive authority over future investigative steps. He also said that Newark over the years had tended to "over-manage" cases by attempting to control tightly field operations and that he disagreed with this approach. Mr. Stewart and I raised concerns over lax control of Weinberg and the lack of requisite machinery for exercising such control. A discussion of the then two pending matters -- Commissioner MacDonald and Senator Williams -touched upon the need for further meetings with MacDonald to eliminate doubts concerning his criminal intent,* the question of the possible closing down of the investigation after both matters were firmed up, and possible venue for trial of any indictments.* Mr. Nathan inquired as to what further investigative steps Mr. Stewart and I considered appropriate. We suggested various public official and organized crime subjects both within and without Atlantic City previously developed by virtue of known profiles, other probes and ABSCAM contacts with Errechetti. We emphasized the pressing public need to inquire into allegations concerning the Casino Control Commission and the activities of the casino industry. I also cited the importance of either proving or disproving the Errichetti allegations concerning New Jersey legislators so that the corrupt might be prosecuted and those who might be the innocent victims of Errichetti puffing could be cleared. Messrs. Heymann and Nathan commented upon the potential investigative subjects noting the national consequences of casino related matters. Mr. Nathan questioned why the Brooklyn Strike Force should be involved at all in any further investigative efforts involving New Jersey subjects, asking me why my office simply should not assume sole responsibility for future ABSCAM efforts with New Jersey, par-

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* Among the factors discussed were the absence of indications of corrupt intent in pre-March 31 conversations, the possibility (Continued)

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that Errichetti pressured MacDonald to attend on March 31, and the fact that a meeting could be arranged with MacDonald directly in view of the reported luncheon conversation following the March 31 meeting with McCloud in which MacDonald allegedly sought employment for himself and his son-in-law with Abdul's casino. No such further meeting was ever held. At some point later in the investigation, I recall field expressions of fear that a conversation would produce exculpatory information.

* Venue decisions were properly postponed until conclusion of the investigation.

ticularly the casinos, as the target area. I again pressed for a cooperative arrangement, reemphasizing the reasons previously stated, particularly the advantage to using Brooklyn's relationships with the undercover team and the case agent to enhance investigative progress.

On July 19 or 20, Messrs. Heymann and Nathan advised all prosecutors concerned: that the ABSCAM investigation would continue with the New Jersey political and organized crime subjects in the casino industry and elsewhere, which were described at the July 18 meeting, as the primary targets; that jurisdiction over ABSCAM would be transferred to New Jersey under the aegis of Mr. Stewart and myself; that Brooklyn would continue to have primary prosecutive oversight of the on-going MacDonald and Williams matters; and that investigative steps in those matters would be undertaken by Mr. Puccio only in consultation with Mr. Stewart and myself.

Mr. Stewart and I visited Mr. Puccio in Brooklyn on July 26, 1979. Mr. Puccio acknowledged the Heymann decision. He indicated that a copy of the file would be sent to us promptly, that a good faith effort would be made to effect a smooth transition with the undercover people so that New Jersey leads might be properly pursued, and that no action would be initiated with respect to the MacDonald and Williams cases without prior consultation with us. We, in turn, advised Mr. Puccio that we would consult with him concerning future developments in New Jersey and have him as an integral part of the investigatory process.

Notwithstanding Mr. Puccio's commitments and the orders of Messrs. Heymann and Nathan expressed both in July and on several subsequent occasions which will be mentioned, the undercover operatives never pursued New Jersey organized crime and corruption leads in any comprehensive way or with any diligence, and remained under the prosecutorial umbrella of Brooklyn.

From this point on, New Jersey's involvement in the covert phase followed two courses.

The first, because the operatives did not come to New Jersey, was to ask the Department of Justice to enforce its directive that ABSCAM focus upon previously and properly targeted New Jersey organized crime and public corruption subjects.

The second -- as information became available to us -- was to communicate to the Department our continued concerns about the conduct of Weinberg, the absence of adequate factual predicates in focusing the investigation in other directions at particular persons, and the lack of objective supervisory oversight of the field. We urged that Weinberg and ABSCAM be brought under control and warned that Weinberg's overreaching might be constitutionally impermissive and could jeopardize potential prosecutions. The potential for mischief, noted from the outset, became more apparent as further information became available following the July Heymann-Nathan directive when we began to receive from the FBI more specific information about the investigation and when, in August, we received a copy of the file and began to review the history of past investigative action.

The concerns, as well as the apparent refusal of the field to pursue the Departmental priorities, were called to the Department's attention in various telephone and personal conversations which I had with Mr. Heymann, Mr.Nathan and Acting Deputy Attorney General Ruff and in comprehensive memoranda dated September 12, 1979, October 31, 1979, November 7, 1979, December 3, 1979, January 8, 1980 and January 29, 1980 forwarded by Mr. Stewart to either Mr. Margolis or Mr. McDowell.* Before transmittal, the contents of these memoranda were reviewed by me and represented the position of the New Jersey United States Attorney's Office. The concern over Weinberg was also expressed in memoranda requested by the Department concerning specific cases.** Submission of such memoranda was suggested to me by Mr.Nathan in various conversations between us as early as August and requested in writing by memorandum of October 5, 1979. Accordingly, in late August or early September I assigned Assistant United States Attorneys Braniff and Alito to assist Messrs. Plaza and Weir in reviewing copies of the recently received tapes, transcripts and other information concerning ABSCAM, in continuing legal research and in writing such memoranda.

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* Mr. Stewart also had telephone and personal conversations with these gentlemen.

** In response to the request, and after much factual and legal research, memoranda were submitted in December of 1979 and January of 1980 in connection with the Williams, MacDonald and Thompson cases.

Returning to the chronology, sometime in July or early August of 1979 we reviewed the taped conversation between Weinberg and Senator Williams which took place immediately prior to the latter's meeting with the "Sheik" in Virginia on June 28 and during which Weinberg coached the Senator as to what he must say to the Sheik. Needless to say, such conduct triggered concern not only in terms of prosecutorial responsibility but also from the standpoint of avoiding jeopardy to a potential future prosecution. These concerns were communicated to the Department and to the operatives over the ensuing weeks. August 9 bears particular mention in this context.

After several attempts, we were able to schedule a meeting with the operatives in an effort to discuss possible future investigative steps. On August 9, 1979, Messrs. Plaza and Weir met with Messrs. Weinberg, Amoroso and Good in Atlantic City. New Jersey FBI Special Agents Schneider and Houlihan were also present. During the meeting, Mr. Plaza referred to Weinberg's coaching of Senator Williams and cautioned him not to repeat such activity. Weinberg responded that unless he told people what to say there would be no cases. The undercover operatives indicated disappointment that the coaching episode had been recorded and stated an intention not to record such conversations in the future. Mr. Plaza advised that all conversations and events were to be recorded or memorialized by 302 or other report.

The ABSCAM operation continued but outside the Department's declared priorities. As we learned much later, the field devised the "Sheik Asylum" scenario in July or August and put it into effect. Over the ensuing months, contact was made with numerous subjects, some of whom were selected rather indiscriminately. On or about August 28 or 29, we learned that contact had been made with Philadelphia Congressman Myers. With Mr. Nathan's permission, on September 6 I met with Peter Vaira, the United States Attorney for the Eastern District of Pennsylvania, and informed him of ABSCAM and of developments involving his District.

The "Sheik Scam" and the Myers involvement were the first indications of a radical change in the nature of ABSCAM, one engineered by the field. The operatives had not focused upon New Jersey organized crime and corruptions targets, as the Heymann-Nathan July 1979 directive required them to do. A further meeting of affected prosecutors was scheduled in Washington for September 13, 1979. By Mr. Stewart's comprehensive memorandum of September 12 to Mr. Margolis, pertinent events from April to date were summarized and various legal problems were identified. The memorandum also emphasized again that the case management techniques necessary to the proper supervision and control of Weinberg had not as yet been put in place.

The September 13 meeting was attended by Mr.Nathan, Mr. Margolis, Mr. Stewart, Mr. McDowell, Mr. Vaira, Mr. Puccio and myself. We raised the Williams coaching incident and the Washington officials agreed that such practices must cease.[*] The investigative priorities were restated by Mr. Nathan. The previously identified organized crime and corruption leads in New Jersey (together now with Philadelphia) was again listed as the first investigative priority.[**] Specific guidelines were outlined to govern any communication or operational problems. I requested that the substance and directives of the meeting be confirmed in writing in view of the failure of like oral commands which followed the July meeting. Mr. Nathan agreed. And the understandings confirmed on September 13 were memorialized in an October 5 memorandum from Mr. Nathan to Mr. Margolis, Mr. McDowell, Mr. Vaira, Mr. Puccio, Mr. Stewart and myself.[***]

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[*] Mr. Heymann expressed much concern over the coaching when I met with him the same or the following day. He questioned how the government could prosecute someone for following a government script.

[**] On September 24, at Mr. Margolis' request, Mr. Stewart forwarded a 14 page memorandum identifying again the organized crime and political corruption subjects against which ABSCAM might, at least initially, be directed.

[***] As there indicated, the first investigative priority was to pursue leads against subjects within the District of New Jersey and the Eastern District of Pennsylvania. The subjects were to be identified by Mr. Stewart and myself with the advice of Mr. Vaira. Investigative activity was to be coordinated by New Jersey. Mr. Puccio was continued as the prosecutor with day-to-day operational oversight in areas not affecting New Jersey and Pennsylvania. The memorandum went on to advise that whenever it appeared that the investigation might be directed toward subjects other than those identified as first priority by Mr. Stewart and (Continued)

The confirmatory directive of September 13, as memorialized by the memorandum of October 5, was never followed. Though Newark prosecutors were able to meet with case Agent Goode on at least three occasions during October, nothing of consequence to pursuit of New Jersey subjects occurred, during the meetings. Excuses were forwarded as to why the operatives would be unable, for one reason or another, to make progress. During this time frame, of course, the "Asylum" scam was being pursued elsewhere. The meeting with Agent Goode on October 4, however, which occurred at the Newark FBI office, is instructive in

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myself, Mr. Puccio would advise us of the suggested diversion. If we believed the proposed activity would adversely affect the first priority, we had the option of objecting to the suggested change of direction and the disagreement would be resolved in Washington by Mr. Margolis. With respect to the MacDonald and Williams cases which were described as being substantially completed, the confirmatory memorandum stated that primary prosecutive responsibility on a day-to-day basis was to remain with the Brooklyn Strike Force. All steps necessary to complete the investigation were to be determined after consultation between Messrs. Puccio, Stewart and myself. In addition, Mr. Puccio was enjoined to submit legal memoranda summarizing the evidence to date in the two cases and discussing any evidentiary or legal problems which might exist concerning the elements of the offenses and possible defenses. Mr. Stewart and I were solicited to file memoranda setting forth any additional facts or legal analysis which we believed should be considered prior to seeking indictments. The confirmatory memorandum also discussed the location of future meetings and overt acts in the investigation, indicating that no effort should be made to influence artificially the location in which acts would take place and that, to the extent possible, acts should occur in the jurisdiction in which the subjects were elected or appointed. The memorandum concluded by indicating that the investigation would not be continued for an undue period of time and would be concluded after all factors had been taken into account, including the right of the electorate to know of charges against their public officials.

another respect. During the meeting, Goode criticized Plaza for having admonished Weinberg during their August 9 conversation to avoid coaching, claiming that Weinberg had been offended and that the admonishment had thereby "jeopardized" the investigation.

Mr. Stewart's October 31 memorandum to Mr. McDowell, reported in detail about events over the past month and a half and problems which had developed. Reference was made to Agent Goode's October 4 statement to Plaza, noting that possible coaching incidents raised possible deficiencies in criminal intent and urged that immediate corrective measures be taken. The memorandum observed that the informant seemed to be directing the course of the investigation and that management must be tightened. The memorandum also described the investigation as being at a critical juncture and called for Washington to enforce its mandates not only as to proper management but also as to its designated investigative priorities in New Jersey and Philadelphia. The memorandum also discussed the MacDonald case, indicating that the absence of an intent to receive money was a distinct possibility and reiterated again the request that efforts be made to enhance the tape of the supposedly incriminatory March 31 luncheon meeting.*

On or about November 9, Messrs. Plaza and Weir met with Messrs. Puccio and Goode in Brooklyn. During the course of their meeting, Goode stated that he wished to run the investigation without prosecutorial interference or oversight, noting that this was the way Mr. Puccio handled things. Both Plaza and Weir urged the importance of prosecutorial oversight to avoid legal problems in the future. Mr. Stewart advised Mr. McDowell of this conversation.

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* The request had been forwarded several times including in an October 19 memorandum from Mr. Stewart to Mr. McDowell.

These and other events prompted a further meeting in Washington on November 14, 1979. Among the attendees were Messrs. Heymann, Nathan, Vaira, Margolis, McDowell, Puccio, Stewart and myself. A variety of subjects were discussed including possible dates for termination of ABSCAM, possible press awareness of the probe, management needs and priorities.* The field's diversion into the "Asylum" scam had identified a number of subjects for possible criminal prosecution. Mr. Nathan accordingly listed perfection of these cases as the first order of business but also directed again that New Jersey leads be pursued. As previously indicated, this command was neither honored nor enforced.

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* Mr. Nathan suggested the investigation be terminated by the time of the primaries. Both Mr. Vaira and I pointed out the hazards of premature termination and urged the investigation continue until all leads were properly pursued. Mr. Puccio expressed concern that the press might already have the story, claimed that Errichetti had somehow become suspicious. Mr. Heymann stated that he believed the Wall Street Journal knew of the investigation but would withhold publication of a story at the present time.

On December 19, 1979, in response to the Department's oral requests in August and September of 1979 and to the October 5, 1979 written solicitation in Mr. Nathan's memorandum for comment upon cases, I sent to Mr. Heymann a memorandum to me from Messrs. Plaza, Braniff and Alito containing a factual and legal analysis of matters involving Senator Williams. The memorandum had been reviewed and edited by me and represented the office view of the matter based upon the file as it existed at that time. The memorandum concluded that, based upon the available information, Weinberg had engaged in overreaching and that the Senator's rights had been violated. Copies of the memorandum were sent to Messrs. Ruff, Nathan, Margolis, McDowell, Puccio and Mullen. Subsequently, on January 8, 1980, memoranda were also sent dealing with the MacDonald case, the Thompson case, and the legal issues of entrapment and due process.

On January 7, 1980, I had a telephone conversation with Mr. Nathan. Among other things, the discussion touched upon the reasonable predicate for believing that criminal conduct will occur before an investigation is directed toward a given subject. Mr. Nathan questioned our previously, and repeated, expressed insistence that such a predicate must initially exist. Mr.Nathan stated his view that overreaching by the informant need not be evaluated in advance. He indicated that proper operating procedure would permit having public officials attend a meeting and be videotaped without prior predicate and that judgments would subsequently be made as to whether or not to prosecute based upon whether a crime was in fact committed and whether there had in fact been entrapment. He also stated that he had little regard for the viability of the due proccss defense and found nothing improper in Weinberg's coaching of Senator Williams.

On January 8, 1980, another comprehensive Stewart memorandum was forwarded to Mr. McDowell. It again stated the problems being encountered in fulfilling the investigative responsibility which the Department had imposed upon New Jersey. It cited further substantive problems engendered by Weinberg's insistence upon devising and pressing the criminal scheme.

On January 18, 1980, Mr. Nathan circulated a memorandum to all prosecutors directing that a centralized grand jury in Brooklyn would be utilized to gather evidence in all of the cases, indicating the covert phase of the investigation would soon conclude and scheduling a meeting in Washington to discuss the matter further. The memorandum also assigned case responsibilities to each of the involved offices.

The further meeting called for by Mr. Nathan took place on January 22, 1980. Mr. Nathan announced that the covert phase of the investigation would conclude on February 1st.

By Stewart memorandum of January 29, 1980 to Mr. McDowell, further concerns over Weinberg's overreaching were stated.

The covert phase of ABSCAM concluded on February 2, 1980.

OVERT PHASE

New Jersey was assigned the MacDonald and Maressa cases. In addition, we were to pursue with the New Jersey FBI various investigative leads involving casinos. Messrs. Plaza and Weir were assigned to the task and worked very closely over many months with the FBI. As directed, the centralized grand jury in Brooklyn was utilized to gather evidence. The general inquiry into casino related matters did not produce evidence to support allegations of criminality. The investigation continued in depth in connection with the MacDonald and Maressa matters. In the MacDonald case, Mr. Weir learned in March or April that past reports of the March 31, 1979 luncheon had been inaccurate. For almost a year, prosecutors were under the impression, based upon representations from the field as to what had occurred, that MacDonald had made corrupt and incriminating statements at the luncheon meeting. Yet, a year later, Agent Amoroso indicated no such statements had been made. Newark prosecutors continued to note a number of unrecorded or inaudible conversations between Weinberg and Errichetti which usually occurred before important events in the case. Indeed, one unrecorded meeting of long duration took place on the evening before the Errichetti-

MacDonald March 31, 1979 trip to Long Island.[*] Obviously, it was important to know what had transpired during this conversation in evaluating the potential case against MacDonald. On April 17, Mr. Weir wrote to Mr. Puccio and inquired as to any recollection he might have on this score.[**] And we continued to request of the Department an opportunity to debrief Weinberg and Amoroso on the subject.

On April 25, 1980, Messrs. Plaza and Weir submitted a 23 page investigative status report to me summarizing the vast amount of work they had undertaken in pursuit of the responsibilities assigned to New Jersey and advising as to the current status of each matter. I revised the report and forwarded copies to Mr. Heymann and Mr. Nathan.

It was approximately at this point in time that Mr. Nathan began to press me to commence our own ABSCAM grand jury and to indict Mr. MacDonald on the basis of what he termed the _prima facie_ videotape evidence. I refused. Citing reasons of principle and practicality gathered during my years in law enforcement, I told Mr. Nathan of the importance of assembling and evaluating as much relevant information as possible before suggesting that an indictment be handed up and indicated that before any action was taken we assuredly wished to question Messrs. Amoroso and Weinberg about what in fact had occurred during the various unrecorded or inaudible conversations. I refused to commence a New Jersey grand jury proceeding until such debriefing had occurred. I did so out of a sense of caution. I decided not to start the potential indictment process moving until the operatives had been produced and the promised interviews had been conducted.*

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[*] Messrs. Plaza and Weir "discovered" this fact only because a recorded conversation refered to the prior unrecorded meeting. The meeting was otherwise not noted in government files.

[**] He also sought, without success, to interview FBI Special Agent Fuller who had information about Weinberg's dealings in fictitious certificates of deposit.

Messrs. Plaza and Weir continued to work diligently upon both of the cases assigned to New Jersey. They were also in contact with Assistant United States Attorneys from Philadelphia and Washington to be whatever assistance they could in the pursuit of cases in the Eastern District of Pennsylvania and the District of Columbia. They continued to use the centralized grand jury in Brooklyn to gather evidence. They continued to press the Department, and me, for a master list of tapes, for copies of tapes and transcripts, for interviews of the operatives and for all other relevant information.

On May 29, 1980, Mr. Weir and I attended a meeting of prosecutors in Washington to discuss the Jenrette case. Present were prosecutors from the District of Columbia and representatives of the Department including Messrs. Heymann and Nathan. Some due process concerns were raised during the course of the meeting, including Weinberg's taped attempt to target two United States Senators. The District of Columbia office requested further time to inquire into various evidentiary concerns but were directed to return an indictment withing a set period of time. It was at this meeting that Mr. Nathan indicated that Weinberg was to be paid in accordance with the number and status of officials that he was able to bring before the cameras. Convictions were not a prerequisite to payment.

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* During the week of May 12, Messrs. Plaza and Wier attended a conference of all involved prosecutors for a supposed thorough debriefing of Messrs. Amoroso and Weinberg. They were unable to gather the information we required. Amoroso and Weinberg arrived some hours late and were not prepared for a total debriefing session.

On June 4, 1980, Messrs. Weir and Plaza at my request prepared another status report of their considerable investigative efforts and I forwarded a copy to the Department in Washington.

On June 6, 1980, Messrs. Weir and Plaza and FBI Special Agent Houlihan interviewed Joseph DiLorenzo, Mayor Errechetti's nephew. Mr. DiLorenzo offered information that Weinberg allegedly shared the $25,000 and $100,000 payments to Errechetti in the MacDonald matter and that Errechetti made a significant number of gifts to Weinberg.

On June 12, 1980, Mr. Weir attended a prosecutors' meeting involving the Thompson case. Both Mr. Weir and District of Columbia Assistant United States Attorney Roger Edelman discussed information which had recently become available and which suggested additional misconduct on Weinberg's part. Specifically, the allegations were that Weinberg had received a gift of a microwave oven and that Weinberg, himself, may have been the source of the false certificates of deposit which he had purportedly "recovered" and for which he was given a cash prize by the Department of Justice. Information about the certificates of deposit had come from Mr. Rosenberg who also commented upon the availability of other witnesses to the scam. Mr. Puccio indicated that he was aware of the microwave oven allegation and said that he would see that the oven was removed from Weinberg's house. He stated that he saw no problem with the certificates of deposit since there were no plans to charge Rosenberg with a crime involving those certificates. He also said that both he and case agent Goode would "coach" Weinberg on these points. After discussion, Mr. Nathan indicated there would be "no coaching" but authorized Messrs. Puccio and Goode to deal with Weinberg and denied Mr. Edelman's request for authority to undertake an immediate debriefing of Weinberg. There has, to my knowledge, not as yet been an objective inquiry into the allegations that Weinberg was the source of the certificates of deposit in the matters involving Rosenberg.*

Thereafter, Mr. Weir asked Mr. Houlihan to inquire into the allegations concerning the certificates of deposit and concerning possible gifts and to seek information from the FBI on these points. On or about June 16, Agent Houlihan teletyped the request to FBI headquarters in Washington.

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* There is also evidence that Weinberg was the source of false certificates of deposit given to Errechetti.

On June 17, Messrs. Plaza and Weir traveled to the District of Columbia to participate with District of Columbia Assistant United States Attorneys Edelman and Kotelly in scheduled interviews of Mr. Rosenberg and of Mr. Weinberg. I assigned Messrs. Plaza and Weir this task at the specific request of United States Attorney Ruff who indicated that his Assistants enjoyed the opportunity to work with Messrs. Plaza and Weir and that they could be of assistance to his office were they to attend the interviews. In addition, Mr. Rosenberg was a common figure to cases assigned to the District of Columbia and to New Jersey. Mr. Rosenberg was interviewed on June 17. The Weinberg interview was scheduled for June 18. Messrs. Edelman and Kotelly decided that, in accordance with usual procedure, they would interview Weinberg outside the presence of other potential witnesses and thus outside the presence of Messrs. Goode and Amoroso. Messrs. Goode, Amoroso and Weinberg arrived at the District of Columbia United States Attorney's Office on June 18 and were escorted into a conference room in which Messrs. Edelman, Kotelly, Plaza and Weir were sitting. Messrs. Kotelly and Edelman advised Good of their intentions in questioning Weinberg. Messrs. Goode and Amoroso refused to have Weinberg interviewed in that fashion and insisted upon being present.

They directed pejorative remarks at Messrs. Plaza and Weir, suggesting essentially that the idea of a solitary interview of Weinberg was that of Plaza and Weir and that Messrs. Plaza and Weir were their enemies. They indicated that they did not wish to speak to Messrs. Plaza and Weir again.

On June 19, I spoke with both Mr. Ruff and Mr. Heymann about what had occurred on the prior day and about the outrageous conduct of the Messrs. Goode and Amoroso.* I also discussed with Mr. Heymann the reason why I did not want to convene a grand jury and why I wished to assemble all pertinent factual information before proceeding in that fashion. Mr. Heymann approved of this approach and suggested I contact Mr. Nathan to convene a prosecutors' group to review the evidence in the MacDonald and Maressa cases to date.

On June 20, I contacted Mr. Nathan by telephone. He had evidently not spoken with Mr. Heymann about our June 19 meeting and accordingly reacted to the suggestion of a prosecutorial group review with much hostility. He criticized my insistence upon assessing what had occurred during unrecorded conversations stating that I wished only to learn of exculpatory facts since unrecorded conversations would usually not be incriminatory. I again tried - without success - to explain to Mr. Nathan that becoming acquainted with what had occurred during all conversations and meeting, including those which were unrecorded, was simply a matter of proper prosecutorial practice and responsibility.

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* There was, of course, a possible calculated connection between the event and the fact that Messrs. Weir and Plaza continued to ask proper and pertinent questions and to seek all relevant information, including facts concerning Weinberg's conduct.

Soon after the June 18 events in Washington, Messrs. Weir and Plaza asked to be relieved of their ABSCAM responsibilities because of their concern that critical evidence in the MacDonald case was being surpressed and that a proper evaluation of possible criminal conduct by Weinberg was not being undertaken by the Department.

Another meeting was scheduled in Washington and occurred on June 24, 1980. It was attended by Messrs. Heymann, Nathan, McDowell, Weir and myself. The following transpired: Mr. Nathan indicated that the undercover people did not wish to work with Plaza and Weir and that a debriefing would be unproductive. He stated that New Jersey was only interested in negative (exculpatory) facts and allegations. Mr. Nathan said that the MacDonald case should go to the grand jury, that an indictment should be handed up on the basis of the videotape evidence, and that any exculpatory material should be dealt with at trial. He indicated that Weinberg had been interviewed by Mr. Puccio and had denied receiving gifts. He confirmed that the Rosenberg allegations concerning the certificates of deposit had not been investigated. I stated once again that I considered it my responsibility to refrain from initiating a criminal prosecution unless I had reviewed all relevant facts capable of being ascertained in advance. I emphasized that, especially in a case such as MacDonald in which wrongful knowledge and criminal intent were such vital issues, I believed a prosecutor had the responsibility to attempt to identify exculpatory material and that, as a practical matter, one would assuredly wish to be aware of any such information in advance of trial. The suggestion was made that I withdraw Messrs. Plaza and Weir from ABSCAM, given the attitudes of the undercover people, I disapproved of this approach because it might falsely and improperly reflect upon Messrs. Plaza and Weir and because the situation was caused solely by the improper intransigence of the undercover operatives who deserved to be called to task. The meeting ended with the commitment that the operatives would be directed to submit to a debriefing by Messrs. Plaza and Weir and that Department attorneys who had already been working on certain ABSCAM cases would participate in order to try to smooth the waters.

After the meeting, I reflected upon the current situation. For months, the objective had been to gather and evaluate all relevant material in the MacDonald case before considering indictments. Debriefing of the undercover people was central to this effort. I realized that, notwithstanding the unwarranted and improper attitude of the undercover personnel, forcing them to a debriefing with Plaza and Weir might well exacerbate matters without producing much relevant information and that more factua data might be gained by having other attorneys undertake the task. I realized that calling for the assistance of some other attorneys at this point in time might be misconstrued. Nonetheless, I believed the paramount consideration was that relevant information be obtained without delay. I returned to Mr.Heymann's office and spoke with him. We reassessed the problem and, in return for his commitment that a full debriefing of the undercover operatives would take place and that he would support a full and complete grand jury review, I indicated that I would write him a letter requesting the assignment of two Public Integrity Section attorneys to assist me in completing the cases. Accordingly, on June 30, 1980, I wrote to Mr. Heymann, citing the problem which beset us and requested the assignment of two additional attorneys to assist in completing the record which we would evaluate in order to make prosecutive judgments. I stated that while I knew the unwarranted situation which gave rise to our problem would be resolved given sufficient time, I believed the prompt and proper disposition of the cases to be of paramount significance and that my request was the most likely to achieve that result from a practical standpoint. In a July 28, 1980 letter to Mr. Keeney, the understanding was stated in somewhat further detail. The letter indicated that the Departmental attorneys were to undertake a full debriefing of the undercover operatives, were to report to me concerning their affairs and that final prosecutive evaluations and decisions would be made by Mr. Heymann and myself. Thereafter, in late August or early September of 1980, the two assigned attorneys, Messrs. Holder and Weingarten visited New Jersey, were housed in the United States Attorney's Office and commenced to function.

EXHIBIT 29

STATEMENT OF WILLIAM W. ROBERTSON

Mr. Chairman and Members of the Subcommittee:

I appreciate the opportunity to appear before you in connection with your hearings concerning the undercover operation known as ABSCAM.

It has been my impression that much of the testimony that you have taken thus far has, perhaps of necessity, involved overviews of the ABSCAM operation. Inasmuch as this is the first, and possibly the only opportunity that I will have to describe my involvement and the involvement of the United States Attorney's Office for the District of New Jersey, during a period commencing in approximately September, 1980, and continuing until March of 1981, I thought I would attempt to summarize, as well as I am able, the activities of my office and myself during that period of time.

By way of background, prior to my resignation on December 3, 1981, I had served with the United States Attorney's Office in the District of New Jersey since November of 1972. During that time I served not only as an Assistant United States Attorney assigned to general criminal matters, but, had as well served as the Deputy Chief of both the Criminal Division and the Special Prosecutions Division (white collar crime-political corruption) of that office. In 1976 I was appointed the Attorney in Charge of the Newark office of the Organized Crime Strike Force. I served in that capacity until I assumed my position as First Assistant United States Attorney in January 1978. By order of the United States District Court I was appointed United States Attorney for the District of New Jersey on September 15, 1980 and served in that capacity until my resignation on December 3, 1981. Prior to joining the United States Attorney's Office, I served four and one-half years as a Captain in the Judge Advocate General's Corps of the United States Army and before that I served as judicial Law Secretary to the Late Honorable Merritt Lane, Jr., Judge of the New Jersey Superior Court. Half of my tour with the Judge Advocate General's Corps was devoted to responsibilities attendant to the investigation and prosecution of general courts-martial offenses.

I first became aware of the ABSCAM operation sometime in late February of 1979 along with the then United States Attorney for the District of New Jersey, Robert J. DelTufo. My recollection is that our first notification came during a meeting attended by Mr. DelTufo, myself, the Special Agent in charge of the Newark Office of the Federal Bureau of Investigation, Robert C. Stewart, Attorney in Charge of the Newark Strike Force, and Special Attorney Thomas Puccio, Attorney in Charge of the

Brooklyn Organized Crime Strike Force. Mr. Puccio, at that time, generally outlined the nature of the investigation. During the course of that meeting it became clear that the investigation had developed information relating to New Jersey and that there would be a role to be played by attorneys from our office. Thereafter, the United States Attorney assigned Edward J. Plaza, who was then the Executive Assistant United States Attorney for the District of New Jersey and Robert A. Weir, Jr. who was and still is the Assistant Attorney in Charge of the Newark Organized Crime Strike Force as the two attorneys principally responsible for assisting in the development of the factual record in connection with the ABSCAM investigation. Mr. DelTufo and Mr. Stewart remained actively involved in a supervisory capacity.

Thereafter I had only fleeting and periodic contact with the investigation. I was not involved in its day-to-day activities but periodically would be consulted at key times during the course of the investigation for my recommendations and advice.

According to my best recollection, sometime during the early summer months of 1980, (perhaps as early as June of 1980), Mr. DelTufo informed me that he would be resigning in the fall because of financial pressures generated by the educational needs of his children. Later that summer I was informed by the Chief

Judge for the United States District Court that the Court had voted to appoint me United States Attorney for the District of New Jersey upon Mr. DelTufo's resignation.

During the summer of 1980, it became apparent that once Mr. DelTufo resigned it would be incumbent upon his successor to assume his role in the ABSCAM investigation. As a consequence during the mid and late summer of 1980, I began to become more familiar with the New Jersey aspects of the investigation. By that time the undercover phases of the investigation had been completed and the attorneys who had been assigned cases were actively engaged in assembling, reviewing and cataloging various items of evidence pertaining to their respective assignments. Two matters had been assigned to our office and Edward J. Plaza and Robert A.Weir, Jr. had been engaged in assembling the relevant information and material that pertained to the involvement of Casino Gaming Commissioner Kenneth MacDonald and State Senator Joseph Maressa. By the end of the summer of 1980 I had become aware of certain facts which had necessitated a request by Bob DelTufo that two attorneys from the Public Integrity Section be assigned to the District of New Jersey to assist in completing the factual record and whatever Grand Jury investigation was to be conducted in the MacDonald and Maressa investigations. Specifically, I had been advised, and had reviewed memoranda which indicated, that Mr. Plaza and Mr. Weir had, as a result of the inexcusable conduct of certain agents and the undercover informant Melvin Weinberg, been prevented from pursuing factual information which was necessary to the development of a complete record of the facts and circumstances surrounding both investigations.

To put this in some perspective, some background is necessary: At the time I began to become more conversant with the investigation the following had occurred -- It appeared that during the period commencing shortly after the disclosure of ABSCAM in February 1980 and continuing through June of 1980, by direction of the Department, all materials that were to be gathered by Grand Jury process were being funnelled through a centralized Grand Jury operating in the Eastern District of New York (Brooklyn). Control of all other materials, including tapes, transcripts, 302's and the like was also centralized in Brooklyn. Unfortunately, Mr. Plaza and Mr. Weir were not receiving copies of tapes, transcripts, inventories, 302's and other like information that they requested through Brooklyn on a timely basis. Similarly, in some cases information they had requested be subpoenaed through the centralized Grand Jury was not subpoenaed because of decisions being made in Brooklyn. These decisions were not communicated to either Mr. Plaza or Mr.

Weir until well after they were made. The effect of the lack of the flow of such information was to impede, to a degree, the progress of our efforts to develop a factual record sufficient to permit the investigation to proceed to the next stage. Despite the obstacles, however, Mr. Plaza and Mr. Weir had managed to assemble a considerable amount of information about each case and despite the less than desired coordination, had moved the cases along nicely. Unfortunately, the pace was apparently not to the liking of some in the Department, and a number of suggestions had been made (I believe principally by Irving Nathan) that at least the MacDonald case be brought to indictment principally on the basis of a video tape of a meeting which MacDonald had attended when Senator Errichetti received a valise containing $100,000. Fortunately, that pressure had been resisted because the factual record had not been adequately completed to a point that would permit a meaningful grand jury presentation, much less an indictment.

The actual event which triggered Mr. DelTufo's request for assistance from the Department occurred on June the 18th, 1980, in the office of the United States Attorney for the District of Columbia. Pursuant to a request by Assistant United States Attorneys Roger Edelman and John Kotelly of that office, Mr. Plaza and Mr. Weir had travelled to Washington on June 17, 1980 for the purpose of participating in debriefing witnesses including the primary undercover informant/operative, Melvin Weinberg. On June 17, 1980, Mr. Plaza and Mr. Weir participated in the defriefing of a witness by the name of William Rosenberg. Mr. Rosenberg provided information which indicated that Melvin Weinberg had perpetrated a scam within a scam against the F.B.I. concerning millions of dollars in forged bank certificates of deposit.

On June 18, 1980, Mr. Plaza and Mr. Weir, at the request of Assistant United States Attorney Edelman, were invited to participate in a debriefing of Melvin Weinberg. Prior to the start of the debriefing Mr. Edelman advised F.B.I. Special Agents Anthony Amoroso and John Goode, who had accompanied Weinberg to the United States Attorney's Office, that in order to preclude a defense suggestion that witnesses were being prepared in an improper manner, he intended to speak to each witness individually and, therefore, to interview Weinberg outside their presence since they were also potential witnesses. Mr. Edelman's advice elicited an explosive response from Special Agent Goode, who advised Mr. Edelman that no one could speak to Weinberg without he and/or Mr. Amoroso being present. Despite Mr. Edelman's explanation that based on his experience such joint interviews were fraught with dangers, Special Agent Goode persisted and violently objected to any interview of Weinberg out of his or Special Agent Amoroso's presence. Mr. Plaza and Mr. Weir were merely bystanders during the course of this colloquy. When Mr. Plaza spoke in an attempt to identify the problem, Mr. Goode erupted at Mr. Plaza and in a highly emotional manner indicated that Mr. Plaza and Mr. Weir were the "problem" and that among other things they and their office were the "enemy". According to Mr. Goode's very animated statements during that meeting, Mr. Goode and Mr. Amoroso and, apparently, Weinberg were disturbed by Mr. Plaza and Mr. Weir having pointed out on prior occasions (in response, I might add, to requests for their opinion), various entrapment and due process issues that were raised by Weinberg's activities and a lack of supervision during the undercover phase of the investigation. Mr. Amoroso and Mr. Goode's unexpected response and refusal to permit Weinberg to be debriefed out of their presence precluded Mr. Plaza and Mr. Weir from gaining any useful information from Weinberg on June 18.

Thereafter, when Mr. DelTufo attempted to address this episode, it became clear that Mr. Goode's statement, and more disturbingly his view of our office was apparently shared by individuals in the Department's supervisory chain. During the course of a telephone conversation two days after the incident, Irvin Nathan repeated Mr. Goode's characterization of the office since it was interested, in his view, only in discovering exculpatory evidence from Weinberg. I should emphasize that by this time Mr. Plaza and Mr. Weir had assembled enough information to warrant a careful and thorough debriefing of Weinberg as well as the agents who were responsible for supervising him during the covert phase of the investigation. There were a substantial number of unrecorded conversations, as well as a number of conversations which while recorded still had to be transcribed. Additionally, there were a number of unsettling items of information which indicated that Weinberg had been receiving gifts from targets, may have fabricated evidence, and may have shared in the payoff money that had been given to targets. In order for the investigation to move forward in any responsible fashion, the most direct and practical way to explore these issues would have been for Mr. Plaza and Mr. Weir to have a reasonable opportunity to debrief the informant and the undercover agents. Based on the June 18 meeting, however, it was clear that unless some remedy was fashioned, the investigation would be stymied because of the agents' intention not to cooperate. In an effort to resolve this situation, Mr. DelTufo had meetings with Phillip Heymann, who was then the Assistant Attorney General in charge of the Criminal Division as well as Mr. Nathan. While it was clear that the agents' behavior was totally unjustified, it was just as clear that it could not be addressed directly at that time without seriously sidetracking and perhaps disrupting the progress of the investigations. During the course of a meeting held at the Department on June 24, 1980, Mr. Nathan indicated that the agents and the informant would not cooperate with Weir and Plaza and any future debriefings would be unproductive because the agents would not recall facts and circumstances that were relevant to the inquiry. For his part Mr. Heymann did not indicate that he would take any affirmative action to correct this situation. Faced with that dilemma, Mr. DelTufo, as a pragmatic solution, requested the assignment of two independent attorneys who would essentially debrief the undercover operatives and thus permit the District of New Jersey to complete its pre-Grand Jury investigative phase of both cases. Mr. Heymann agreed to the suggestion as a practical solution which really bypassed the problem and left it to be addressed directly at some future time. It was, and I must emphasize, for that reason and that reason alone that the two attorneys from the Public Integrity Section were assigned. They were requested by the United States Attorney for the District of New Jersey as a means of hurdling an unwarranted obstacle that had been created by the inexcusable behavior and refusal of Weinberg and the agents to cooperate in the completion of the cases.

Thus the investigations were in the following posture when I became actively involved in late August of 1980: Two attorneys from the Public Integrity Section, Reid Weingarten and Eric Holder had been assigned to Mr. DelTufo to assist in completing the factual investigation and in presenting evidence, if appropriate, to United States Grand Juries for their consideration. Mr. Plaza and Mr. Weir were assigned to brief these attorneys and to update them on all of the work they had performed.

In order to confirm all of the understandings to that point in time, I travelled to Washington on Thursday, August 28, 1980, to meet with Mr. Heymann and Gerald McDowell who was the Attorney-in-Charge of the Public Integrity Section. The meeting was necessary in my mind because of the attitude of the Department, which seemed intent upon a quick indictment in the cases prior to the time that a complete and accurate factual record had been developed. The principal spokesman who seemed to espouse this attitude was Irvin B. Nathan. Mr. Nathan, however, did not particpate in my meetings. I made clear to both Mr. Heymann and Mr. McDowell that as United States Attorney I would insist that the investigations and the Grand Jury proceedings elicit a complete and accurate picture of the activities of all individuals involved. I indicated to Mr. Heymann that while I understood that it would be impractical at that time to address the June 18th behavior of Weinberg and the agents because they were involved in other trials, I intended to address that issue directly at an appropriate time in the future. It was agreed as a result of our meetings that the attorneys from the Public Integrity Section would continue to be assigned to New Jersey to complete the factual record and to conduct the Grand Jury presentation of the evidence in both cases under my supervision as United States Attorney. It was further agreed that the ultimate decision as to whether any charges would be proposed to the Grand Jury would be made jointly by Mr. Heymann and myself.

I think it is important for me to digress at this point to explain my concern with regard to establishing some agreement as to how the investigations would proceed once I assumed responsibility for the investigations in New Jersey. Based on my review of the situation to that point in time, it appeared that some of the earliest involvements that the undercover operative/ informant and the undercover agents had with political figures in New Jersey centered around the informant's relationship with then Mayor of Camden and New Jersey State Senator Angelo Errichetti and Errichetti's subsequent introduction into the situation of Commissioner Kenneth MacDonald. By August of 1980, the complete nature of the Weinberg-Errichetti relationship and their activities relating to the involvement of MacDonald had not been fully explored. This nothwithstanding the fact that this was one of the earliest aspects of the New Jersey phase of the investigation. Other cases had been tried to a conclusion and had gone through due process hearings. But many of the issues relating to Weinberg's activities had not been adequately probed. Indeed, a substantial quantum of factual information had not been gathered and reviewed in an orderly manner. I was resistant to the idea of rushing to indictment of either MacDonald or Maressa without a thorough and complete investigation of all of the activities of Errichetti, MacDonald and Weinberg.

By the time the cases became my responsibility, not only did we have the precedent of the Third Circuit's decision in United States v. Twigg, but we had as well some idea of the nature of a due process hearing such as that which had been conducted by Judge Fullam in connection with the Janotti case in the Eastern District of Pennsylvania. It was clear that if we were to be prepared for (and perhaps even forestall) further time consuming and expensive due process hearings, the most effective and practical way to identify any problems was through a thorough and complete investigation at the Grand Jury phase of the case. Indeed, the way the cases had developed to that point provided us with an excellent opportunity to carefully evaluate some of the issues that had been raised in the already tried cases at the Grand Jury level and not after charges had been preferred when we were under the press of court mandated deadlines. As a practical matter this was the best way to prepare for the onslaught of motions that could be expected once any indictments were preferred in either of these two cases. It was therefore a practical judgment that while we had the opportunity and the ability through the Grand Jury process to completely develop and uncover all of the facts we should take the opportunity before making any final decision to prosecute. On a policy level, it has always been the practice of our office to utilize the Grand Jury to test our proofs and to examine in a careful and orderly fashion any exculpatory evidence that the potential target and/or his or her witnesses cared to offer. It is both expensive and time consuming to engage in such an examination after the indictment has been returned. Finally, in my view it was the duty of the prosecutor not merely to seek an indictment but rather to determine the true facts. For all of those reasons, I felt that it was important in these investigations to take advantage of the opportunity that a thorough Grand Jury investigation presented. Both Mr. McDowell and Mr. Heymann agreed.

In addition to my concern about the MacDonald and Maressa matters, I was interested in determining whether there was any other Atlantic City information that had not been developed during the covert phase that possibly could be developed during the Grand Jury phase. Unfortunately, some promising leads had not been addressed during the undercover phase of ABSCAM and I was hopeful that we might be able to develop further information through the use of traditional Grand Jury investigative techniques.

Immediately after my conference with Mr. Heymann and Mr. McDowell, Mr. Weingarten and Mr. Holder began to come to the District on a regular basis and we commenced the formal Grand Jury investigation after they had been familiarized with the investigative record thus far developed. As their supervisor, Mr. Holder and Mr. Weingarten did the job I expected. They were careful and thorough. During the period between September and early December of 1980, they conducted a very thorough investigation which included interviews of a number of witnesses before the Grand Jury and the review of a substantial amount of documentation. Especially with regard to the MacDonald case, the investigation began to reveal the same types of disturbing incidents as had been previously identified by Mr. Plaza and Mr. Weir. By late November they reported in a status report addressed to Mr. McDowell and I that they had identified a number of very troublesome incidents involving Weinberg. Among the items that concerned them were "countless unrecorded conversations" and the fact that Weinberg had been totally unsupervised during the course a substantial number of contacts that were relevant to the case. Most troubling was the development of evidence that Weinberg may very well have been the source of millions of dollars of forged certificates of deposit which had been used to justify not only the continuation of ABSCAM but the payment of substantial cash bonuses to Weinberg. Finally, the invesitgation had uncovered additional facts which indicated that Weinberg may have received gifts from targets of the investigation unbeknownst to the FBI. While Mr. Holder and Mr. Weingarten tended to discount the credibility of the reports of Mr. Weinberg's involvement in the CD transactions especially at that point in time, they later advised me that after interviewing an FBI agent who was most familiar with the genesis of the CD's they were firmly convinced that Weinberg was in fact the source of the CD's and that the substantial recoveries Weinberg had been credited with making were actually a product of his manipulations and fabrications.

In addition, in their November status report, Holder and Weingarten went on to advise me how the evidence they had thus far gathered seemed to undercut a proferred defense that had been submitted by Errichetti and MacDonald. In summary, the evidence in the case revealed that a total of $125,000 had been given to

Errichetti during the course of the investigation - $25,000 had been given to him by McCarthy on January 20, 1979 and an additional $100,000 had been given to him in MacDonald's presence on March 31, 1979. On April 3, 1979, $25,000 of the March 31st payment had been returned to the FBI as a result of Weinberg's efforts to some how induce Errichetti (and MacDonald) to contribute to the repair of Abdul's damaged yacht. Errichetti through the mouth of his nephew and driver Joseph DiLorenzo suggested that Weinberg received the rest of the money as well. Specifically, DiLorenzo stated that his uncle instructed him to leave the envelope Errichetti had received from McCarthy on January 20th for Weinberg in the Long Island Hotel where Errichetti and DiLorenzo had lodged the night before and where they had indeed met Weinberg. As to the March 31st money, DiLorenzo stated that he and his uncle had returned to Long Island on Sunday, April 1st and had given the briefcase back to Weinberg at an isolated rest stop on the Long Island Expressway. According to the evidence that was then available to them, Weingarten and Holder had tentatively concluded that DiLorenzo's account was not credible. As to the January 20th incident, they were unable to discover any evidence which would indicate that Errichetti and DiLorenzo had been registered at the hotel DiLorenzo described. Weinberg had no recollection of such a meeting. As to the March 31 - April 1, 1979 incidents, Weingarten and Holder had been provided with a copy of a tape of a telephone conversation which by its terms indicated a conversation had been initiated by Weinberg in New York to Errichetti in Camden at approximately 2:30 p.m. on Sunday, April 1, 1979 - at approximately the time DiLorenzo stated he and his uncle were in Long Island for the purpose of their secret rendevous with Weinberg at the rest stop on the Long Island Expressway. Weinberg denied the meeting had taken place.

By the end of November, 1980 it appeared that Errichetti and MacDonald were proffering a false defense through DiLorenzo. DiLorenzo's account of the January 20th incident could not be corroborated and there was a recorded telephone conversation which contradicted DiLorenzo's assertions that DiLorenzo, Errichetti and Weinberg had met on April 1st. The recorded telephone conversation seemed to totally destroy DiLorenzo's account since Errichetti and Weinberg could not be in two different places at the same time. Thus, it appeared that the statements of DiLorenzo were totally unworthy of belief.

I must emphasize that the foregoing conclusions were made by Weingarten and Holder on the basis of evidence that was then made available to them. What they had not seen and what they later saw dramatically changed their view. What they had not seen or reviewed were telephone toll records that had been maintained on Melvin Weinberg's telephone. These toll records had been requested by Messrs. Plaza and Weir well over a year before Weingarten and Holder had become involved. What happened when Weingarten and Holder finally were permitted access to these toll records was the following: First, as to January 19-20, 1979 events, they discovered that a credit card call charged to Weinberg's credit card had been placed from the very hotel that DiLorenzo had described as being the hotel where he and his uncle met Weinberg and stayed on the night of January 19, 1979. When confronted with the evidence, Weinberg had an amazing recollection that indeed he had met with Errichetti and DiLorenzo at that hotel on January 19, 1979. This meeting between the three was not known by any undercover operative or agent during the course of the covert phase of the investigation. Weinberg still maintained, however, that he did not receive any of the money from Errichetti and DiLorenzo on January 20, 1979. With regard to the March 31- April 1, 1979 incidents, the toll records upon examination failed to reveal any telephone call between Weinberg and Errichetti occurring at or about 2:30 p.m. on April 1, 1979. When Mr. Weingarten made this discovery, which was some time in mid-December of 1980, the discovery so startled him that he called me to personally inform me. In summary, he reported as follows:

He recounted the history of the testimony of Joseph DiLorenzo in the Meyers case that had been tried in the Eastern District of New York. Mr. DiLorenzo had testified that he had driven Mayor Errichetti back to Long Island to meet Mr. Weinberg on April 1, 1979, the day after the $100,000 had been transferred to Errichetti in MacDonald's presence at Abdul's offices. This testimony was offered by Mr. DiLorenzo to impeach Weinberg and the government's theory that Errichetti had retained $100,000. In response to DiLorenzo's testimony, the government, according to Mr. Weingarten, had introduced the tape recording of the April 1, 1979, 2:30 p.m. telephone conversation between Weinberg in Long Island and Errichetti in Camden. The tape recording had been used to effectively impeach DiLorenzo's account of a meeting with Weinberg and Errichetti's alleged return of the valise that he had received the day before in MacDonald's presence at Abdul's offices. According to Mr. Weingarten, he was unable to find an entry for a call at 2:30 p.m. on April 1, 1979, on Weinberg's telephone toll records which would corroborate the time of the conversation between Weinberg and Errichetti as expressed on the tape. Instead, the only call Weingarten found on that day was a call initiated by Weinberg to Errichetti at approximately 4:54 p.m. on April 1, 1979. Mr. Weingarten noted in particular that the 2:30 p.m. time for the tape recording had been established by a verbal preamble contained on the tape recording itself. The preamble had been placed on the tape by Weinberg. According to Mr. Weingarten, this was the only tape recording of a conversation he had come across during the investigation that had such a preamble establishing the time the call was initiated. After Mr. Weingarten made this discovery, he contacted Weinberg who was unable to provide a satisfactory explanation for the discrepancy. Mr. Weingarten indicated that the FBI had also confronted Weinberg about the discrepancy and that Weinberg did not offer any explanation except speculation that perhaps he had attempted to initiate the call at 2:30 p.m. but was unsuccessful in completing it until 4:54 p.m. The FBI, according to Mr. Weingarten, was in the process of having the original tape examined by an expert. Weinberg, of course, continued to deny he had met Errichetti on April 1, 1979.

Just prior to Weingarten's discovery of the April 1, 1979, tape discrepancy, we had agreed that for the purpose of making an orderly evaluation of the prosecutive potential of the cases, Mr. Weingarten and Mr. Holder should begin to prepare prosecution memoranda which set out the facts they had developed, the offenses that appeared to have been committed as well as the potential defenses that would be available based on the facts as we then knew them. When Weingarten advised me of the tape discrepancy, I instructed him to continue to develop the memorandum factoring in the information so that a studied evaluation of it could be made in the context of the overall case. While that was my intent, my ability to have a complete picture of the case, despite Weingarten's and Holder's excellent efforts, still faced one major obstacle. At this point, I must back up for just a moment. At the beginning of my involvement in the investigation, I had made it clear, not only to Weingarten, Holder, McDowell and Heymann that I was intent on a full and complete investigation, but more importantly, I had made that point to the Grand Jury at the beginning of their review of the case. Pursuant to that intention, I had indicated early in the investigation that I expected the undercover operatives, including Weinberg, to testify before the Grand Jury in the District of New Jersey. By early December, it appeared that the idea was meeting with some resistence in Washington. While not directly stated to me by any member of the Department's leadership, Mr. Holder and Mr. Weingarten indicated to me that they were receiving subtle messages not to call Weinberg and/or the agents before the Grand Jury and that my intention to have Weinberg and the agents testify was putting both of them in the middle of what they believed would be an unpleasant confrontation with the Department. Because I did not wish to place either of them in an uncomfortable position, or initiate an unnecessary dispute between myself and the Department, which could delay the cases, I decided that in order to determine whether the testimony was absolutely necessary, I would have their prior public testimony reviewed in an effort to determine if any of the issues that concerned us had already been satisfactorily resolved by testimony in prior public proceedings. If it had, then that testimony could be used to satisfy our obligation to the Grand Jury and if it had not, then there would not be any valid reason for the Department to resist a request to have them testify before the Grand Jury. To that end, I requested that Mr. Weingarten and Mr. Holder assemble all of the transcripts that had been generated as a result of the various trials and due process hearings. In accordance with my instructions, they gathered together a number of transcripts which I assigned to Mr. Plaza and Mr. Weir for review since they were most familiar with many of the issues, both factual and legal, that had arisen during the course of the investigation.

The transcripts were brought to New Jersey on December 3, 1980. On that day, I also had a meeting with Mr. Weingarten and Mr. Holder, who indicated that the Departmental leadership (My Heymann, Mr. McDowell and Mr. Nathan) had indicated that both matters should be concluded by the preference of charges by December 18, 1980. As of December 3, no final prosecution memorandum had been prepared and, as I have indicated earlier, there were a number of questions concerning Weinberg's activities still to be resolved, as well as issues relating to the appropriateness of charges and the legal theories upon which charges would be preferred. Additionally, and perhaps most importantly, none of the undercover agents nor Weinberg had testified before the Grand Jury. As a result of the meeting on December 3, it was agreed that a prosecution memorandum would be constructed in accordance with my directions and that the December 18 date would be utilized for further Grand Jury work that had to be done before a final decision was made. After the conclusion of the meeting, Mr. Weingarten approached me privately and indicated that "Washington" wanted him to determine what my position or reaction would be to transferring the MacDonald matter to the Eastern District of New York in order to avoid the impact of the Twigg decision. I indicated to Mr. Weingarten that in view of the substantial effort that both he and Mr. Holder had expended in presenting the case to the Grand Jury in New Jersey, I did not believe it was appropriate to make such a decision. I further indicated that I was surprised by the suggestion and did not see the necessity of addressing the issue at that time since we had yet to make a final prosecution decision. Mr. Weingarten indicated that it was his personal preference to stay in New Jersey and that he had only been instructed to gauge my reaction to the proposal.

On Thursday, December 4, after I had a chance to reflect further on the transfer question, I indicated to Mr. McMurray, another attorney who was assisting Mr. Holder and Mr. Weingarten, that he should advise Mr. Weingarten that I thought about the proposal some more and that I firmly opposed any transfer of the matter since I believed it would be viewed as forum shopping and an abuse of the Grand Jury in the District of New Jersey.

Between December 3 and December 12, 1980, Mr. Plaza and Mr. Weir reviewed all of the materials that had been provided on December 3. On December 12, Mr. Plaza and Mr. Weir provided me with a draft report of their findings. I reviewed the report and requested that they make certain revisions and finalize the report so that I could forward it to the appropriate people within the Department. As a result, they produced a memorandum of 14 pages dated December 17, 1980, which was addressed to myself, Mr. Heymann, and the United States Attorney for the District of Columbia, Charles F.C. Ruff. The purpose of the memorandum was to document for Mr. Heymann, myself and Mr. Ruff the fact that certain testimony that they had reviewed (given in both the _Criden_ and _Meyer_ cases) conflicted with testimony and other information that they had received during the course of their involvement in the overall ABSCAM investigation. The conflicts related principally to three areas: (1) instructions that had been given to the undercover operative, Melvin Weinberg, during the undercover phase of the investigation; (2) certain testimony relating to compensation paid by the government to Weinberg; and (3) certain testimony relating to gifts allegedly received by Weinberg from ABSCAM defendants and targets.

After I reviewed the memorandum, I immediately forwarded it to Mr. Ruff and Mr. Heymann. I also provided Eric Holder and Reid Weingarten with a copy of the memorandum. By the time of the Plaza and Weir memorandum, at least Mr. Weingarten, who had discovered the information in Weinberg's toll records, as well as further information relating to Weinberg's involvment in supplying false certificates of deposit, was convinced that he could no longer rely on Weinberg and that any future ABSCAM prosecutions would have to be evaluated on the assumption that Weinberg would not be a witness or would be a witness only to those events which the government could fully corroborate with other reliable evidence.

Despite the discrepancies that had been discovered, I advised both Weingarten and Holder to continue to prepare appropriate memoranda for both matters so that we would be in a position to make some prosecutive evaluations in both matters by early January, 1981.

Between December 17 and January 7, nothing was heard from either of the two other addressees of the December 17 memorandum.

On January 7, 1981, I received the first notification that the memorandum had received attention by the Department. At approximately 3 o'clock in the afternoon Mr. McDowell called to advise me that the matters that had been set out in the Plaza and Weir memorandum had been disclosed to the defense in the ABSCAM cases then on trial. According to Mr. McDowell's calls, the information Plaza and Weir had forwarded was summarized and incorporated into a memorandum that had been prepared by Mr. Nathan, and the Nathan memorandum was the actual document being disclosed. Mr. McDowell called to alert me to this fact and to advise me that the deputy chief of his section, William Hendricks, had been designated to be the focal point for any contacts that might be made by defense counsel as a result of the Nathan memorandum's disclosure. According to Mr. McDowell, the initial disclosures were being made in the Lederer case then being tried in Brooklyn and in the Kelly case which was being tried in the District of Columbia. According to Mr. McDowell, all judges and defense counsel in the ABSCAM related cases were expected to have a copy of the memorandum by the end of that week. Mr. McDowell asked that any contacts by defense counsel with our office be referred to Mr. Hendricks for coordination. He also advised me that Mr. Hendricks was being assigned the responsibility of debriefing Mr. Plaza and Mr. Weir about the information they had identified in their memorandum of December 17.

At approximately 5:30 on January 7, I received the second telephone call pertaining to the disclosure of the information contained in the Plaza and Weir memorandum. At approximately 5:30 Thomas Puccio, Attorney in Charge of the Brooklyn Strike Force, called to advise that Judge Pratt had ordered that he produce Mr. Plaza and Mr. Weir on January 8, 1980, at the request of the defense in the Lederer case. In response to my questioning, Mr. Puccio indicated that he did not know what the defense intended to do or how they intended to use Mr. Plaza and Mr. Weir. I recontacted Mr. Puccio after our initial conversation to inquire whether any agents of the Newark FBI office were also being called since at least two of them also had information relevant to some of the items that had been identified by Plaza and Weir. Mr. Puccio indicated that no arrangements were being made for the appearance of the two agents from the Newark FBI office. Mr. Puccio further advised me that he had spoken to the two agents and that they had contradicted Mr. Plaza and Mr. Weir and, indeed, that if Plaza and Weir testified, he might call both agents to the stand to contradict their testimony.

As a result of Mr. Puccio's call, I attempted to contact the Assistant Attorney General of the Criminal Division, Philip Heymann, for the purpose of securing appropriate permission for Mr. Plaza and Mr, Weir to appear and testify the next day. Mr. Heymann was not at his office, but his office was able to provide me with a location for him at a hotel in Palm Beach, Florida. I was unable to reach Mr. Heymann until 7:45 in the evening. I advised Mr. Heymann of the situation and the advice I had received from Mr. Puccio about the requirement that Mr. Plaza and Mr. Weir appear in Brooklyn the next day in connection with the Lederer case. I specifically requested Mr. Heymann's authority to have Mr. Plaza and Mr. Weir appear. Mr. Heymann advised me that both attorneys had permission to appear and to testify and that he wanted every material and relevant fact to come out. He specifically authorized them to testify, and to be interviewed by defense counsel so long as government counsel was present. I specifically requested Mr. Heymann's advice as to the authority of Mr. Plaza and Mr. Weir to disclose internal memoranda if they needed to refer to such to illustrate or document their testimony. When I raised the subject, Mr. Heymann became very agitated and indicated at that point in our conversation that he was very displeased with the fact that Plaza and Weir had written their memorandum and began to imply that somehow it was an improper act. Mr. Heymann did not elaborate on why he felt so upset by the fact that Plaza and Weir had written down their observations, and I indicated to him that I saw nothing improper nor indeed inappropriate as to the method they had used to document and communicate their findings to us. I told Mr. Heymann that I believed it was the professional way to insure that the facts were properly forwarded to the individuals who had the responsibility to make decisions. Mr. Heymann digressed and related how disappointed he was with an Assistant United States Attorney in the Eastern District who had permitted the disclosure of certain internal memoranda in connection with the cases that had been tried before Judge Fullam. Mr. Heymann engaged in a monologue indicating that he wanted all memoranda reviewed by government counsel for work product or other privileges and that if anyone was requested to produce any memoranda, they should produce them to the court in camera so government counsel would have the opportunity to review the documents. In view of the shortness of time involved with regard to Mr. Plaza and Mr. Weir's appearance, Mr. Heymann suggested that in this circumstance that Mr. Plaza and Mr. Weir not bring any of the memoranda that they had prepared, which I informed him were extensive, except for the most recent December 17 memorandum which he indicated they should review before they went to court. Subsequent to my conversation with Mr. Heymann, I advised Assistant United States Attorney Peter Bennett of my office who I had assigned to accompany Mr. Plaza and Mr. Weir to the Eastern District of New York of Mr. Heymann's instructions. Mr. Bennett communicated those instructions to Mr. Plaza and Mr. Weir, and on January 8, 1981, Mr. Plaza and Mr. Weir appeared in the Eastern District of New York in accordance with Judge Pratt's directive.

By the time Mr. Plaza and Mr. Weir appeared in Brooklyn on January 8, 1981, neither they nor I had seen the memorandum that had been prepared by Mr. Nathan ostensibly summarizing the substance of the material that Plaza and Weir had set forth in the December 17, 1980 memorandum. Eric Holder, one of the Public Integrity attorneys who had been working on the MacDonald and Maressa matters, was scheduled to be in New Jersey on January 8 and I requested Mr. McDowell provide Mr. Holder with a copy of the memorandum so that I could review it on January 8. Mr. Holder delivered the copy of the Nathan memorandum dated January 6, 1981, which I believe the Subcommittee has already seen. At the time Mr. Holder delivered the copy to me, he indicated to me that he was very disturbed by the contents of the memorandum and especially with the assertions in the memorandum which indicated that Mr. Plaza and Mr. Weir had done very little, if any, work on the MacDonald and Maressa matters. He stated that he knew that the statement was not correct and was very concerned that such a statement had been made.

My initial review of the Nathan memorandum revealed that it was neither a dispassionate nor objective recitation or summarization of the information that had been forwarded to the Department in the memorandum of December 17, 1980, but was instead an attempt, in someways transparent, to dissemble that information, to attack the credibility of Mr. Plaza and Mr. Weir, and to thereby deter defense attorneys from relying on their information. I will not at this time go into a detailed analysis of the Nathan memorandum except to say that by a memorandum dated January 28, 1981, I specifically and in detail identified a number of the material inaccuracies of the Nathan memorandum. I strongly recommend that this committee seek a copy of my memorandum which was addressed to the then Deputy Attorney General, Charles B. Renfrew, and was prepared by me in accordance with Attorney General Civiletti's instructions which were issued to me in person on January 14, 1981. The most disturbing aspect of the memorandum when I first viewed it on January 8, was the statement and suggestion that Mr. Plaza and Mr. Weir had been removed from involvement in the ABSCAM cases because they had done little, if any, meaningful work. Both Mr. Nathan and Mr. Heymann knew this to be absolutely false. Because it was absolutely clear after reading the Nathan memorandum that instead of insuring that potential exculpatory evidence was properly disclosed, Mr. Nathan and Mr. Heymann had embarked on a course designed to obscure the information, I prepared a letter dated January 9, 1981 to Mr. Heymann in which I indicated my strong disagreement with the memorandum's factual statements and his publication of it and further my view that his and Mr. Nathan's involvement in its preparation and publication disqualified them from a further development of the facts surrounding the disclosures. It was my view that his participation and further involvement might be perceived as an attempt to thwart or otherwise chill the development of the information that Mr. Plaza and Mr. Weir had attempted to communicate to the Department for evaluation and, if appropriate, for dissemination to the courts then presiding over the ABSCAM cases. I also wrote to the Attorney General and the Deputy Attorney General and provided each of them with a copy of my letter to Mr. Heymann. Those letters were also dated January 9, 1981.

I should add for this Subcommittee's information that shortly after we were informed that the Nathan memorandum had been constructed and disseminated to defense counsel, but before we had seen the memorandum, my office was inundated with telephone calls from various members of the press both in New Jersey and in Washington, D.C. inquiring about our role in ABSCAM. We could not comment.

On the morning of January 9, 1982, Mr. Plaza presented me with a copy of a letter that had been signed by he and Mr. Weir and was addressed to the four District Court Judges then presiding over ABSCAM cases. That letter read as follows:

> "My Dear Judges: Pursuant to our obligations as prosecutors, on December 18, 1980 we delivered a copy of the enclosed memorandum to Assistant Attorney General, Philip B. Heymann. Despite the fact that Mr. Irvin Nathan and Mr. Thomas Puccio are potential witnesses, they were assigned a responsibility for investigating statements made in our memorandum and for authoring a memorandum addressed to Mr. Heymann dated January 6, 1981.
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> On January 7, 1981 at approximately 4:30 P.M., we were called by William Hendricks, Public Integrity Section, Criminal Division, Department of Justice, who advised us that he had been assigned by Gerald McDowell, who also witnessed some of the events described in our memorandum, to conduct an interview of us in the presence of an FBI agent. This was the first contact we had with anyone from the Department of Justice after delivery of our memorandum on December 18, 1980.
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> At approximately 6:30 P.M. on January 7, 1981, we were advised by Mr. Thomas Puccio that the Honorable George C. Pratt had ordered us to

> report to his courtroom the following day, January 8, 1981 at 9:15 A.M. Upon our arrival in the Eastern District of New York, we made an attempt to secure a copy of the Nathan memorandum, but Mr. Puccio refused to supply us with a copy. Later that afternoon, we were provided with a copy of the memorandum, apparently at the urging of the defense. We both testified before George Pratt that afternoon. In an obvious attempt to destroy our reputations, the Nathan memorandum was intentionally leaked to the press. The allegations in that memorandum are malicious, slanderous and can easily be proven patently false. We bring this matter to your attention for whatever action you may deem appropriate."

Attached to the letter was a copy of the original December 17, 1980 memorandum that had been prepared by Mr. Plaza and Mr. Weir. My examination of the Nathan memorandum as compared to the information that had been documented by Plaza and Weir in their memorandum of December 17, indicated without question that not only was the Nathan memorandum slanderous, but to the extent that it purported to communicate the information that Plaza and Weir had set forth in their December 17, 1980 memorandum, it was defective to a degree bordering on intentional deception. Mr. Plaza and Mr. Weir had performed as professional prosecutors and had in accordance with my instructions prepared an accurate and substantially factual memorandum on December 17, 1980. In view of the events that had transpired since that time and the Department's complete and utter failure to evaluate in any professional way that information and, if appropriate, communicate it to the courts, I felt that I could not and should not prevent the transmission of the source document to the judges who had responsibility for overseeing each of the ABSCAM cases. I sent a copy of the letter to each of the three United States Attorneys in whose districts the cases were pending. In addition, I called the Attorney General of the United States and left a message with a member of his staff and explained what had transpired. In addition, I called each United States Attorney to alert them that the letter had been transmitted to the judges in their districts.

Shortly after my telephone calls to each of the United States Attorneys, I received a telephone call from the Deputy Attorney General, Charles B. Renfrew. By way of background noise I determined that Mr. Renfrew was calling me from an airport terminal somewhere, and in a very authoritative tone and abrupt manner he began to challenge me and to question me about the actions of my office. According to Mr. Renfrew, Mr. Nathan had informed him that a letter had been sent to the ABSCAM judges by Mr. Plaza and Mr. Weir. I advised Mr. Renfrew that, in fact, a letter had been sent and that I had sent letters to him and the Attorney General on that very day concerning the events that had taken place. Because of his challenging and accusatory manner, I asked Mr. Renfrew whether he was aware of or had read either the

Plaza and Weir memorandum or the Nathan memorandum. He indicated that he had not. I indicated that the Plaza and Weir memorandum had been forwarded to the Department in December 1980 and was allegedly the source document for the Nathan memorandum and that since the Nathan memorandum had been released, I did not see any proscription to providing the Courts with the source document. Mr. Renfrew specifically asked me if Plaza and Weir's letter had already been sent because if it had not, he wanted it stopped. I advised Mr. Renfrew that the letter had been sent and it could not be stopped. The call was most unpleasant and lasted less than three minutes in duration.

At approximately 5:30, I received a telephone call from Assistant Attorney General Heymann, who advised that Mr. Renfrew had directed that I report to Washington, D.C. on the following Monday to meet with him to discuss the situation. I advised Mr. Heymann that I had sent a letter to him on that day advising him that I felt that he and everyone under his supervision should be enjoined and barred from further involvement in the development of the facts in this matter, but in view of Mr. Renfrew's directive I would be in Washington on Monday, January 12, 1981.

On Monday, January 12, 1981, I travelled to Washington, D.C. accompanied by the Executive Assistant United States Attorney Charles J. Walsh. At approximately 10:45, I met with Mr. Heymann who had assembled an entourage of individuals in his office. Mr. Heymann began to set forth a recitation of his perceptions of the Nathan memorandum as a predicate to demanding that I specify the precise inaccuracies in the Nathan memorandum. Mr. Heymann described those in attendance as individuals familiar with the situation and some as people who had actually participated in the preparation of the Nathan memorandum. At the end of Mr. Heymann's monologue, I indicated to him that I would not engage in a dialogue with him with regard to the inaccuracies of the Nathan memorandum and that I believed that I had stated my position clearly in my letter of January 9, to the effect that he and all personnel under his supervision should be barred and enjoined from further developing the facts in this matter. I further advised him that I believed that the very meeting we were then involved in was unwise and could be viewed in the future as an attempt to chill and thwart the development of the facts surrounding the whole situation. I requested a meeting with the Attorney General. Mr. Heymann interrupted the meeting and called the Attorney General's office and secured an appointment for both he and I to see the Attorney General on January 14, 1981. The meeting with Mr. Heymann lasted less than fifteen minutes.

On January 14, 1981, I again travelled to Washington, D.C. to meet with Attorney General Civiletti. The meeting with the Attorney General occurred in the early afternoon of January 14, 1981. I outlined for the Attorney General the current status of the situation and my view that the Criminal Division should be barred and enjoined from further involvement in the development of the facts that had been discovered by Mr. Plaza and Mr. Weir and professionally documented in their memorandum of December 17, 1980. I also advised the Attorney General that the Nathan memorandum was false in a number of material respects, one of which involved an allegation and suggestion that Mr. Plaza and Mr. Weir were removed from the New Jersey investigations because they had failed to do little, if any, meaningful work. I advised the Attorney General that the statement was false. Mr. Heymann at that point in the meeting acknowledged, as he put it, "tragically" that the statement had been an error and a mistake and that, in fact, he had come to determine that Mr. Plaza and Mr. Weir had done extensive work with regard to that investigation. I must digress at this point to emphasize for this Subcommittee that, notwithstanding Mr. Heymann's acknowledgement that the statements contained in the Nathan memorandum concerning Mr. Plaza and Mr. Weir's professional performance were false, no one from that date to this has corrected the public record about either of these individuals and the fact that the Nathan memorandum is totally false as it pertains to them and their activities. It is an outrage and a tragic event when two dedicated and professional prosecutors are intentionally vilified in a false document which was purposely leaked to the press with the intent to blacken their reputations and to dissuade counsel and the courts from considering their information. That wrong was not corrected by those in authority once they determined those facts were false. Never from the date that Mr. Heymann acknowledged that the statement was false has the public record been corrected with regard to Mr. Plaza and Mr. Weir. If this committee does nothing else it must correct the record. Ed Plaza and Bob Weir have been professional prosecutors, one for a decade and the other for longer than that, whose careers and records are unblemished save this single scurrilous and false accusation in a memorandum that was published with the intent to chill and thwart the development of the true facts surrounding the activities of Melvin Weinberg and the activities of the undercover operatives in ABSCAM. I ask that this Subcommittee, as a part of whatever finding it makes, make the finding that Edward Plaza and Robert Weir performed in the manner that is consistent with the highest traditions of justice under our system.

As a result of my presentation, Attorney General

Civiletti issued an order dated January 14, 1981, a copy of which is attached to this statement and is made part hereof. That order, by its terms, was designed to professionally and objectively identify all of the facts surrounding the information that had been set forth by Plaza and Weir in the December 17, 1980 memorandum, while at the same time safeguarding the rights of the defendants and ensuring that the investigations that were underway continued to proceed in an orderly fashion.

At the very moment that I was meeting with the Attorney General, unbeknownst to me, Mr. Plaza and Mr. Weir had been again summoned to Brooklyn in connection with another ABSCAM proceeding. No instructions were issued to Mr. Plaza or to Mr. Weir as to the meaning or the reason for this appearance. In an effort not to interrupt the proceedings or to delay them because of his inability to refer to memoranda which recorded his recollections, Mr. Plaza took all of his memoranda with him on that occasion. During the course of his questioning, Mr. Plaza was requested to produce some of those memoranda and when he attempted to surrender the memoranda _in camera_, he was rebuffed by the Judge. In addition, government counsel sat idly by during the colloquy between Mr. Plaza and the Judge and as a result, Mr. Plaza was required to surrender documents to the defense. When defense counsel indicated that they needed time to review the documents and that the documents contained important information, the Judge retrenched from his original direction and retrieved the documents from defense counsel and thereafter refused to disclose a substantial portion of the documents that Mr. Plaza had initially offered to him for inspection _in camera_. At no time throughout the course of this entire episode was Mr. Plaza provided with any instructions or guidance by government counsel or anyone from the Department of Justice, and during the course of the colloquy which led to the disclosure of the documents, government counsel sat quietly without interposing any objection or offering any advice. It was on the basis of this disclosure that the first breach of Attorney General Civiletti's Order occurred on January 15, 1981. By letter dated January 15, 1981, Philip B. Heymann without prior authorization of Attorney General Civiletti, issued a letter which mischaracterized the instructions that Mr. Plaza had received in connection with the earlier _Lederer_ appearance and further characterized Plaza and Weir as "simply defense witnesses." To remind you, Mr. Heymann had never directed that Plaza and Weir not surrender any documents but had merely _suggested_ that on that occasion because of the shortness of time they not bring their documents with them when they appreared during the course of their appearance in the _Lederer_ case. Mr. Plaza and Mr. Weir had been provided with no instructions with regard to this second appearance, and were in fact left totally at sea by government counsel's failure to interpose any objection or offer any advice or guidance. Mr. Heymann's characterization of them as having violated some supposed directive was totally inaccurate. The letter was the beginning of a series of events which clearly undermined not only the specific directives but the spirit and the import of Attorney General Civiletti's Order of January 14, 1981. I responded to Mr. Heymann's letter by advising him that this was just the type of ex-parte communication that was precluded by Attorney General Civiletti's Order of January 14, 1981. I also criticized Mr. Heymann for not having taken the opportunity to correct the record with regard to the false statements that had been made in the Nathan's memorandum which he had acknowledged were incorrect during our meeting with Attorney General Civiletti. I had determined from members of Attorney General Civiletti's staff that Mr. Heymann had not received authorization to send the letter from the Attorney General or his staff.

A central provision of Attorney General Civiletti's Order was that Mr. Plaza and Mr. Weir be debriefed regarding their participation in ABSCAM as soon as possible. The purpose of the debriefing was ostensibly to permit the Department to determine whether any information resulting from the debriefings ought to be furnished to the Courts. Particular attention was to have been paid to any information relevant to due process hearings in the Eastern District of New York, the District of Columbia, and the Eastern District of Pennsylvania. Unfortunately, the Attorney General's Order was not implemented. While debriefings of Mr. Plaza and Mr. Weir did take place, they were designed not to discover the objective facts, but rather were clearly aimed at attempting to develop impeachment evidence that could be used in the event either Mr. Plaza and Mr. Weir testified again in an ABSCAM related matter. It was a wasted effort - for there was no impeaching evidence to be developed. Mr. Plaza's debriefing, which had been ongoing for several days, was abruptly interrupted in order that Mr. Weir's debriefing could take place shortly before Mr. Weir was scheduled to be called as a witness in Brooklyn. No report or other transcript of the debriefings has ever been prepared to my knowledge and, indeed, the debriefings of Plaza and Weir were essentially abandoned after the Brooklyn due process hearings were concluded. At no time was there any meaningful effort evident to systematically review the items that Plaza and Weir had identified and to evaluate that information from the standpoint of the government's obligation to possibly disclose it as required by Attorney General Civiletti's Order. Unfortunately, by the time these events took place, Attorney General Civiletti had left the Department.

It was in part as a result of my concern about the manner in which the debriefings were to be conducted that I requested an opportunity to meet with the then Acting Attorney General, Charles B. Renfrew, on January 22, 1981 before any debriefing took place. Because Attorney General Civiletti had already left the Department, and in view of the unpleasant telephone conversation with Mr. Renfrew on January 9, 1981, I felt it would be appropriate to meet with him not only to clear the air, but to also confirm Attorney General Civiletti's directions. I also had been informed that one of the FBI agents who would be participating in Plaza's and Weir's debriefings was an agent who had previously been involved in the ABSCAM investigation and who reportedly had forcefully expressed the view that the due process issues were nonsense. Given this agent's participation, I was concerned that the debriefings to be conducted the following week might be a perversion of the Attorney General Civiletti's Order and might be used as a subterfuge to woodshed Plaza and Weir before they were called to testify in further due process hearings. I thought that this was a serious enough alteration of the Attorney General Civiletti's Order so as to warrant the personal involvement of the Acting Attorney General.

The meeting with the Deputy Attorney General, then Acting Attorney General Charles B. Renfrew, was, to put it mildly, a disaster. Mr. Renfrew was not interested in any of my concerns. He neither cared to listen to nor address the issues that I was raising nor was he concerned as it turned out with implementing the Attorney General's Order to insure that Plaza and Weir were fully and adequately debriefed and that their information was carefully evaluated and disseminated to those judges and/or attorneys to whom it should have been disclosed. Indeed, Mr. Renfrew attempted to belittle my concerns and in essence chastised me for being too defense oriented. Instead of addressing my concerns, the meeting turned into an inquisition conducted by Mr. Renfrew and another participant whose presence was entirely inappropriate: Irvin B. Nathan. Mr. Renfrew spent the better part of the meeting challenging me and my Executive Assistant United States Attorney Charles Walsh, as to the activities of our office and the activities of Plaza and Weir, and especially Mr. Plaza's disclosures of the documents in open court on January 14, 1981. I repeatedly tried to refocus the meeting on the issues that had prompted my request for the meeting, that is how we proceed to implement former Attorney General Civiletti's Order that Plaza and Weir be debriefed in order to properly evaluate the potentially exculpatory evidence they had developed. The constant theme that ran throughout the meeting parrotted by both Nathan and Renfrew was that they were not interested in discovering, much less disclosing, any facts or information that undermined the ABSCAM prosecutions and that they stood fully behind the ABSCAM prosecutions. The meeting was a horrible experience punctuated with interruptions, accusations, raising of voices and accomplished little, other than to make it absolutely clear that Mr. Renfrew was totally hostile to the position that we had taken and would not provide any support for the implementation of former Attorney General Civiletti's Order. It was also clear that he was more interested in seeing that Mr. Plaza and Mr. Weir and I were disciplined for whatever reason in an effort to justify and continue to justify the tactics that had been utilized in the ABSCAM investigation, and the memorandum that had been written by Mr. Nathan. There was not one shred of understanding or objectivity demonstrated by him during the course of the meeting and I must say I was not surprised at all when he subsequently recommended that Mr. Plaza, Mr. Weir and I be disciplined for our actions. Unfortunately, his report to the Office of Professional Responsibility as to the occurrences of that meeting is in sharp contrast to my recollections and recollections of my Executive Assistant United States Attorney. I can only assume, since I have not seen the report of the Office of Professional Responsibility, that they also found some sharp differences between Mr. Renfrew's view of our actions and what actually happened. As I have said, I have not seen that report; indeed, I have been denied access to it. I was informed that no discipline was recommended by the Office of Professional Responsibility after a full review of the situation and I can only assume that its conclusion is the result of its disagreement with Mr. Renfrew's view of the actions of Mr. Plaza and Mr. Weir and myself.

Despite the obvious lack of support from Mr. Renfrew, I was determined upon my return to New Jersey to continue to implement Attorney General Civiletti's Order with or without his support. As a result, Mr. Plaza and Mr. Weir both submitted themselves to interviews by an attorney at the Public Integrity Section and with my concurrence specifically requested that those interviews be taped so that there would be a verbatim record of what transpired. This was in my view the intent of Attorney General Civiletti so that there would be an accurate record of all of the information possessed by Mr. Plaza and Mr. Weir. I have been advised that copies of a portion of the tapes that were provided to Mr. Plaza are inaudible. As I said earlier, I do not believe that there has been any compilation or final report issued by anyone who was charged with the responsibility of debriefing Mr. Plaza and Mr. Weir and thus the order of Attorney General Civiletti that there be a complete and full review of all that information has not been implemented to date.

Attorney General Civiletti also requested that I prepare and submit to the Deputy Attorney General not later than January 28, 1981, a memorandum that demonstrated with particularity any ways in which the Nathan memorandum inaccurately or unfairly attacked the integrity of Mr. Plaza and Mr. Weir and unfairly criticized their professional conduct. I prepared that memorandum and it was forwarded to Mr. Renfrew on January 28, 1981. I note for your information that when Mr. Renfrew recommended to the Office of Professional Responsibility that Mr. Plaza, Mr. Weir and I be disciplined, he conspicuously failed to include a copy of that memorandum. That memorandum which should be available to this Committee specifically and in detail points out the inaccuracies of the Nathan memorandum. Indeed, by the time I had my meeting with Mr. Renfrew, it appeared that the Nathan memorandum was more inaccurate than we had ever suspected. In fact, it appeared that Nathan and to an extent, Thomas Puccio and Philip Heymann, had intentionally misled people, both inside and outside the Department into believing that Plaza and Weir's account of a particular meeting of August 9, 1979, had not been corroborated by the other attendees at the meeting. That account turned out to be absolutely false. Despite the Nathan memorandum's implication and Mr. Puccio's statements to me on January

7 that he had interviewed the agents from New Jersey and that they contradicted Mr. Plaza and Mr. Weir's account of that crucial meeting, those agents testified under oath before Judge Pratt and essentially corroborated all of the material aspects of Mr. Plaza and Mr. Weir's account of that meeting. More disturbing than that disclosure was the fact that the agents testified that they had accurately reported their recollections to Mr. Puccio on December 29, 1980, long before the Nathan memorandum was prepared and disclosed and well before Puccio's statements to me on January 7, 1981.

After my meeting with Mr. Renfrew on January 22, 1981, I was effectively superceded with regard to both the MacDonald and Maressa matters. In his Order of January 14, 1981, Attorney General Civiletti had directed that the Criminal Division, not later than January 23, 1981, make a recommendation to the Deputy Attorney General whether to seek an indictment of New Jersey Senator Joseph Maressa and Commissioner MacDonald. The Order provided that I was to provide to Mr. Renfrew, not later than February 9, 1981, any views I had regarding the appropriateness of indictments or the manner in which the cases should be handled. The Attorney General clearly envisioned providing my office with at least two weeks in which to review the recommendation of the Criminal Division. Contrary to that directive the

Criminal Division's memorandum was parcelled out to us in sections and we were given initially only three days in which to respond or to forego the opportunity of making any comment with regard to the recommendation in the MacDonald case. No recommendation was forthcoming in the Maressa case. Because of the intervention, I believe, of Acting Assistant Attorney General John C. Keeney, that period of time was extended to permit us to document our concerns with regard to the evidence that had been developed in the MacDonald case. That evidence ran along the lines that had been outlined by Mr. Plaza and Mr. Weir well over a year before and was essentially confirmed by the attorneys who had been assigned to the investigations from the Public Integrity Section in July of 1980. There were significant discrepancies between Weinberg's account and the objective evidence which indicated that MacDonald was involved in any illegal transaction. By two separate memoranda both submitted on or about February 27, 1981, we attempted to identify those discrepancies for the Criminal Division. Despite that information, I was informed that not only had Mr. Renfrew decided to proceed with an indictment of Mr. MacDonald but further that he had decided that the case against Mr. MacDonald would be removed from consideration by the Grand Jury in the District of New Jersey and transferred to the Eastern District of New York.

Thereafter on March 2, 1981, reportedly as his last official act, former Attorney General Charles B. Renfrew recommended that Mr. Plaza, Mr. Weir and I be disciplined and that the Office of Professional Responsibility review his findings and determine what discipline would be appropriate.

On November 25, 1981, by letter, I was informed by the now Associate Attorney General that the Office of Professional Responsibility had recommended against discipline and that he concurred in that recommendation.

I resigned as United States Attorney for the District of New Jersey on December 3, 1981, after having served with that Office for over 9 years.

Mr. Chairman and Members of the Committee, the foregoing is intended to be a summary of my involvement in the ABSCAM investigations. Subsequent to transfer of the case to the Eastern District of New York, Commissioner MacDonald was indicted. I do not know as I sit here whether the information that was developed during the course of the investigation conducted by Mr. Plaza, Mr. Weir and my office was ever communicated to the Grand Jury in the Eastern District of New York. Unfortunately, that concern has perhaps been mooted by Mr. MacDonald's death.

The issues raised by the manner in which the ABSCAM investigation was handled, however, have not been mooted by either Commissioner MacDonald's death or the conviction of a number of public officials. I have never during the course of my career as a prosecutor been exposed to such institutional resistence and an intentional attempt to thwart the discovery of facts that were relevant to a criminal investigation.

Whether the techniques used in ABSCAM require this Subcommittee to recommend further guidelines will never be known until the whole story of ABSCAM is told. And it cannot be told without this subcommittee's review of all of the internal memoranda that were prepared during the long course of that investigation. Based on the evidence that I have seen, Melvin Weinberg perjured himself, fabricated evidence, shared in the payoffs and has been shielded from having to account for his activities by the very same people who are charged with the enforcement of law. His activities in this regard have not been fully examined, and the extent to which his true actions impact upon the verdicts has not been evaluated by the Courts. No such evaluation can be made until all of the facts concerning Wienberg's actions during the undercover phase are disclosed. In New Jersey we attempted to discover those facts and to professionally document the results of our efforts. For those efforts some of us were recommended for discipline because there was not then nor does there appear to be now any desire on the Department's part to know, or acknowledge what really happened in ABSCAM.

Mr. Chairman, that is the end of my summary, and I am prepared to answer any questions the committee may care to ask.

Office of the Attorney General
Washington, D.C. 20530

January 14, 1981

Honorable William W. Robertson
United States Attorney
Newark, New Jersey 07102

Dear Mr. Robertson:

You have apprised me today in my office of your misgivings about the ABSCAM investigation. I have read all of the memoranda relating to this matter and been fully advised of the facts and circumstances underlying the present events. It is imperative that this matter be quickly resolved in order to protect the integrity of the Department of Justice, to safeguard the rights of the defendants, and to ensure that the ABSCAM investigation is not undermined for reasons having nothing to do with the merits of the cases.

Nevertheless, it is impossible to resolve the matter without a full exploration of the questions now subject to dispute. Accordingly, I am ordering that the following steps be taken immediately.

1. No one is to initiate an ex parte communication with any court having jurisdiction over cases arising from ABSCAM. Henceforth, the resolution of all legal issues and the exchange of all information shall be conducted with strict regard for the established procedures of the Department of Justice.

2. I will ask that representatives of the FBI and the Public Integrity Section of the Criminal Division debrief Assistant United States Attorneys Edward Plaza and Robert Weir regarding their participation in the ABSCAM investigation as soon as possible, and in any event no later than January 21, 1981. Particular attention should be paid to any information relevant to the due process hearings in the Eastern District of New York, the District of Columbia and the Eastern District of Pennsylvania. Assistant United States Attorneys Plaza and Weir should submit in advance or bring with them to the debriefing any materials in their possession that are relevant to these issues. The Criminal Division shall promptly determine whether any information resulting from the debriefings ought to be furnished to defense counsel. Any question as to whether any particular facts should be disclosed to defendants

shall be resolved in favor of disclosure. The Criminal Division shall furnish prosecutors in the Eastern District of Pennsylvania, the District of Columbia and the Eastern District of New York with any such information for transmittal to defense counsel or to the Court. In the same spirit, I encourage full cooperation by Department of Justice personnel in all proceedings relevant to the resolution of fair trial and due process issues arising from the ABSCAM cases.

3. The Criminal Division shall, no later than January 23, 1981, make a recommendation to Deputy Attorney General Renfrew whether to seek an indictment of New Jersey Senator Joseph Maressa and Commissioner Kenneth McDonald. If you wish, you may furnish to Judge Renfrew no later than February 9, 1981, any views you have regarding the appropriateness of indictments or the manner in which the cases should be handled. Judge Renfrew will determine whether, and if so, when indictments will be sought. If Judge Renfrew authorizes indictments, he will also decide by whom and under what circumstances the cases will be prosecuted.

4. No later than January 28, 1981, I ask that you furnish to Judge Renfrew a memorandum that demonstrates with particularity any ways in which the memorandum of January 6, 1981, by Deputy Assistant Attorney General Irvin B. Nathan is inaccurate, unfairly impugns the integrity of Messrs. Plaza and Weir, or unfairly criticizes their professional conduct. I am also directing Deputy Assistant Attorney General Irvin Nathan to document and justify the factual assertions in his memorandum of January 6 that are in dispute. Judge Renfrew, after reviewing all submissions and considering all the circumstances, will take such action as he deems appropriate to resolve any grievances arising from Mr. Nathan's memorandum.

5. Finally, I direct you to furnish to Judge Renfrew no later than January 28, 1981, an explanation of the reasons and justifications for the ex parte communications by Messrs. Plaza and Weir with the four United States district judges having responsibility for cases arising out of ABSCAM. Based on your report, and any other information that is appropriate to his inquiry, Judge Renfrew will review the matter and determine, in light of Department regulations and practices, whether the office acted appropriately under the circumstances.

Sincerely,

Ben Civiletti

Benjamin R. Civiletti
Attorney General

cc: Charles B. Renfrew
Deputy Attorney General

Philip B. Heymann
Assistant Attorney General
Criminal Division

1/14/81--handed to USA
Robertson

EXHIBIT 30

WALDER, SONDAK, BERKELEY & BROGAN
A PROFESSIONAL CORPORATION
COUNSELLORS AT LAW
17 ACADEMY STREET
NEWARK, NEW JERSEY 07102
(201) 624-2155

JUSTIN P. WALDER
JOEL SONDAK
JOHN A. BROGAN
LEONARD H. BERKELEY
THOMAS J. SPIES
BARRY A. KOZYRA
ROBERT L. PENZA
HEATHER G. SUAREZ

MAURICE SCHAPIRA (1906-1968)
DAVID J. SCHAPIRA (1936-1972)
HARRY STEINER (1898-1979)

TELEX 138525

September 13, 1982

REFER TO FILE*

Congress of the United States
Committee on the Judiciary
House of Representatives
Washington, D.C. 20515

Members of the Committee on the Judiciary:

Thank you for the invitation to present this statement and to provide you with my thoughts and concerns regarding the ABSCAM operation, particularly as it applies to my client, a former Casino Control Commissioner of New Jersey, Kenneth N. MacDonald. Mr. MacDonald died on April 17, 1982, while his case was pending, and the indictment against him was dismissed on May 6, 1982.

I would not want this Body to view my sentiments as merely those of an advocate, but rather as one actively engaged in the criminal justice system as a former prosecutor and now a defense attorney, and as an officer of the court with a shared concern about the concepts of fundamental fairness and the administration of justice in this country. As you are aware, questions as to the propriety of the indictment against Mr. MacDonald are not being raised by me for the first time, but were the sincere concerns of a number of representatives within the Department of Justice.

I want to provide you with an understanding of the man whom I represented, so you may have a proper context to evaluate the procedures utilized by the Government in this case. I am advised that during the course of the initial investigation a business associate of Mr. MacDonald was questioned by the FBI and he told them that Mr. MacDonald was the most honest man he had ever met. The FBI responded that this evaluation was similar to the character appraisal given by many others interviewed during the investigation. It is within this context that the procedures followed by the Government, against a man who had no prior involvements with the law and who had an impeccable reputation for honesty and integrity, must be evaluated.

Mr. MacDonald was accused of accepting a $100,000 bribe as a Casino Control Commissioner in order to insure the licensing of a fictitious corporation, Abdul Enterprises, Inc. to operate a gambling casino in the State of New Jersey. The alleged bribe took place on March 31, 1979. The money was turned over by FBI agent, Jack McCarthy, posing as Jack McCloud, Chairman of the Board of Abdul Enterprises. The money was given by Mr. McCarthy and taken by Angelo Errichetti. Mr. Errichetti allegedly had the influence with Mr. MacDonald to obtain the license for Abdul Enterprises. Mr. Errichetti was a braggart and a liar who was anxious to convince representatives of Abdul of his influence throughout the State of New Jersey. He claimed on various tapes to have influence with numerous top officials within the State of New Jersey, much of which was false and misleading. The braggadocio nature of Mr. Errichetti should have alerted the Government to confirm the obviously empty and baseless claims made by Mr. Errichetti.

In addition, in bringing about the bribe scenario, Mr. Errichetti worked closely with Melvin Weinberg, the FBI operative in ABSCAM. Suffice it to say that Mr. Weinberg was the ultimate "con artist" who it appears was involved in scamming the Government, as well as anyone else within his sphere of association. The Government should have been most careful in assessing the combined activity of Mr. Errichetti and Mr. Weinberg in bringing about the indictment of an untainted individual with the fine reputation previously described.

Errichetti was brought into association with McCloud as the representative of Abdul by middlemen named Rosenberg and Eden who had already made contact with McCloud. On January 9, 1979 a discussion occurs between Mr. McCarthy (McCloud) and Errichetti at the Holiday Inn in Atlantic City. During this conversation Errichetti brags about his influence with the Casino Control Commission. At the very outset the Government should have been alerted to the empty and bragging nature of Mr. Errichetti. Errichetti stated that three of the five commissioners were his nominees. (None were his nominees). This included a black man (there was no black man on the Commission), a man named "Collozzi" (no such individual was on the Commission) and a "Mr. Roth" (no man named Roth was on the Commission). See pp. 8 and 9 of transcript of January 9, 1979 attached hereto as Exhibit A and p. 28 of the same transcript attached as Exhibit B. Errichetti indicated during this conversation that he had met "head on head by themselves" with these non-existent people with respect to potential finder's fees for casino applicants. When he referred to Mr. MacDonald as his nominee during this conversation at the same time when he referred to these other people as his nominees, the Government should have known that it might be receiving false information. The identity of the members of the Casino Control Commission is a matter of public information and could have been readily ascertained. An attempt to verify Mr. Errichetti's claims would have raised serious reservations at the outset as to the accuracy of the information being provided by Errichetti.

Errichetti also brags on the tape of January 9, 1979 that he controls three of the five commissioners in order to impress McCloud (McCarthy). See Exhibit A, p. 9. McCloud seems impressed by Errichetti's control of a "majority". A reading of the New Jersey Statute makes clear the requirement of four votes out of five on the Commission in order to grant a license. See N.J.S. 5:12-73d. This fact was also easily verifiable and would have discredited Errichetti's claims of influence. These obvious misstatements by Errichetti should have alerted the Government to be most circumspect in its evaluation of what occurred later.

On February 12, 1979 Errichetti, Weinberg and FBI agent, Anthony Amoroso discussed a planned meeting with McCarthy (McCloud). Weinberg tells Errichetti that "The main thing you oughta speak to him [McCloud] about is McDonald (sic)." Errichetti is then prodded and coached by FBI agent Amoroso to give "McCloud" strong assurances that MacDonald "can do this ... and ... can do that ... you just gotta lead him the way you want" (See p. 5 of the transcript of the taped conversation of February 12, 1979 attached hereto as Exhibit C); and further prods Errichetti that "the big thing is you give him those assurances on ... MacDonald" (See p. 8 of same transcript attached as part of Exhibit D). Amoroso then asks Errichetti whether MacDonald will meet with McCloud, obviously to set up an incriminatory meeting wherein MacDonald would acknowledge the bribe. Errichetti responds that MacDonald won't talk to McCloud. In fact, Errichetti said "Nobody's going to talk to him". Errichetti agrees to arrange a dinner meeting but warns that McCarthy must keep his mouth shut and that Errichetti must tell him, McCarthy (McCloud), what to say. (See pp. 8 and 9 of transcript of February 12, 1979 attached hereto as Exhibit D). Errichetti obviously does not want any suggestion of a bribe being made face to face with MacDonald.

A dinner meeting is then arranged by Errichetti and government agents between Errichetti, McCloud (McCarthy) and MacDonald. The dinner meeting takes place on March 5, 1979 at the Hyatt House, Cherry Hill, New Jersey. The dinner meeting is taped and there are no incriminatory statements by Mr. MacDonald in the entire conversation. In fact, during pretrial discovery proceedings the Government stated that it would not use the tape of March 5, 1979 in its prosecution of the case. Yet, this was the first meeting set up with Mr. MacDonald relating to the alleged bribe. The entire discussion relates to the appropriate procedures to be followed in the normal application for a casino gambling license.

On Merch 8, 1979, at a meeting with Errichetti, Weinberg and Amoroso, Weinberg suggests that a scenario be established at a later meeting whereby McCloud (McCarthy) gives a bribe to MacDonald, or gives it to Errichetti who in turn gives it to MacDonald. Errichetti rejects this plan, indicating that MacDonald is not going to receive any money and that Errichetti is not even going to offer to give him any money. (See pp. 26 and 27 of transcript of taped conversation of March 8, 1979 attached hereto as Exhibit E). It can be seen from this portion of the transcript that Errichetti is most anxious that McCloud (McCarthy) not mention any money or bribe to MacDonald during any meeting, or that McCloud (McCarthy) be involved in any face to face bribery with MacDonald. Weinberg, apparently not pleased with this situation, says that "Well, we'll work on that. We'll hold that in abeyance, we'll work on that." (See p. 27 of transcript).

It should be noted that during the period of time in the latter part of March 1979, FBI agents gave a party on a yacht located in Florida. The idea was to invite middlemen and target politicians to solidify their relationships with the bogus Arab Sheik and his representatives. Errichetti invited MacDonald to attend but he declined, further evidencing a lack of interest by Mr. MacDonald in Errichetti's claimed offer.

Further events indicated that the government agents and Mr. Weinberg were anxious to establish the bribe scenario whereby Mr. MacDonald would accept money in front of FBI agent McCarthy (McCloud). This was so despite Mr. Errichetti's protestations that MacDonald would not accept any money under those circumstances. Weinberg and Amoroso both suggested to Errichetti in a March 22, 1979 transcript of their taped conversation, that it was important to "straighten out" the MacDonald matter, i.e. getting MacDonald and

McCloud together. However, Errichetti indicates on March 23, 1979 that MacDonald is not going to accept money from anyone, except Errichetti. When it becomes apparent that the Government cannot set up the scenario whereby McCloud will pay the money to Mr. MacDonald, he suggests that Errichetti give him the money in his presence. Finally, in a meeting on March 23, 1979, Errichetti agrees that he will drive MacDonald to the parking lot of Abdul Enterprises and, after McCloud gives Errichetti the money in an envelope, Errichetti will hand the money to MacDonald as he sits in the car while McCloud (McCarthy) views the scene from his office window. (See p. 10 of transcript of taped evening conversation of March 23, 1979 attached as Exhibit F). Errichetti's attempt to please McCloud was instigated by a prior meeting of March 23 with Weinberg and Amoroso. In that meeting Errichetti expresses to Weinberg and Amoroso that MacDonald would never meet face to face with McCloud (McCarthy). Finally, Errichetti agrees, at the urging of Weinberg and Amoroso, to speak to McCloud on the evening of March 23 to try and arrange a satisfactory way for McCloud (McCarthy) to get his assurances, or, in other words, to have MacDonald incriminate himself at a later meeting. Weinberg prods Errichetti to "lay it out" to McCloud (McCarthy). (See pp. 15 and 16 of transcript of taped afternoon conversation of March 23, 1979 attached hereto as Exhibit G).

On March 24, 1979 in a meeting with Weinberg and Amoroso, Errichetti, at the suggestion of Weinberg, indicates that he will try to get MacDonald into the office building, rather than passing the money to him in the automobile, as he had previously discussed with McCloud (McCarthy). (See pp. 1 and 2 of transcript of taped conversation of March 24, 1979 attached hereto as Exhibit H).

On March 29, 1979 Errichetti and Weinberg speak on the telephone. Errichetti indicates that he has changed the meeting time on March 31, 1979 from 11:00 to 3:00 and also indicates that he will meet with Weinberg tomorrow, March 30, at 12:15. Weinberg confirms the March 30 meeting. (See pp. 3 and 4 of transcript of March 29, 1979 attached hereto as Exhibit I).

The Government acknowledged during the course of pretrial proceedings that, in fact, a meeting was held on March 30, 1979 between Errichetti and Weinberg. This meeting of March 30, 1979 was never recorded nor was any FBI 302 report ever filed regarding same. When defense counsel asked during the course of pretrial proceedings for the substance of the meeting, we were advised by the Government that Mr. Weinberg could not recall the details of same. Although the Government acknowledged the existence of prosecution memoranda regarding this meeting, no documents were ever produced. (See excerpt of transcript of pretrial proceedings dated January 26, 1982, pp. 48 and 49, attached hereto as Exhibit J). This was obviously a key meeting, one day prior to the alleged bribe of Mr. MacDonald. It was clear that Weinberg was engineering the drama whereby the money would pass to Errichetti with MacDonald being present in the room. No satisfactory or reasonable explanation has been presented by the Government as to this meeting between Weinberg and Errichetti. To this day there has been no full exposition of the substance of this meeting between Mr. Weinberg and Mr. Errichetti.

The meeting on March 30 was significant since the alleged bribe took place on the next day, March 31, 1979. Mr. MacDonald never received or touched the $100,000 passed from McCarthy to Errichetti. The FBI recovered $25,000 of the sum of money from Errichetti under the guise of a need for repairs to the Sheik's yacht. This money was marked, and the FBI conducted a fingerprint analysis of the bills. Mr. MacDonald volunteered his fingerprints for such examination and none of his prints were found on the bills. Also, Mr. MacDonald, at substantial expense, had an audit conducted by certified public accountants on his personal and business accounts which verified that no monies attributable to the alleged bribe passed through any accounts relating to Mr. MacDonald. Copies of all the records and the audit were provided to the Government during its investigation. Indeed, the Government produced no information contrary to the results of this audit. Moreover, Jack McCarthy testified before the Brooklyn Grand Jury on June 4, 1981 that there was no positive evidence that MacDonald ever got any of the money.

The $100,000 was passed from McCloud (McCarthy) to Errichetti. MacDonald was physically within the room at the time. However, the transcripts of conversations as well as the tapes failed to establish that MacDonald was aware of the purpose of the money. In fact, his reactions during the meeting do not substantiate the acceptance of a bribe. He indicates, after McCloud (McCarthy) seeks assurances, that "I had nothing to do with that". The prosecution of Mr. MacDonald, based on these equivocal circumstances, was inconsistent with the testimony of Irvin Nathan, Deputy Assistant Attorney General, at due process hearings, that prosecutions would be based only on unambiguous transactions where it was clear that the targets knew the extent of their involvement. (See transcript of due process hearing in U.S. v. Myers, January 13, 1981, p. 451). After MacDonald leaves the room, McCarthy (McCloud) is obviously distressed and expresses to Errichetti that he wanted guarantees and Errichetti says "Forget the guarantees". The money is passed in an attache case from Errichetti to his nephew-chauffer, Joseph DiLorenzo, who has been waiting in a separate room. In further discovery provided by the Government, Mr. DiLorenzo indicates during interviews as well as testimony, that the money was placed in the trunk of Errichetti's car and was never given to Mr. MacDonald, or opened to his view. Despite this, Errichetti assures McCloud (McCarthy) that DiLorenzo is giving MacDonald the money immediately after MacDonald leaves the company of Errichetti and McCloud (McCarthy) on March 31, 1979).

During a subsequent conversation on March 31, which was inadvertently recorded, Mel Weinberg speaks to a Brooklyn Strike Force attorney, John Jacobs, and an unidentified Government representative. During a portion of the conversation which is obviously not meant for recordation, Mr. Jacobs asked why MacDonald was so angry after the meeting. Over requests by the unidentified Government representative to be quiet because the tape was running (actually the transcript shows the unidentified man saying, "Sh-h-h-h-h"), Weinberg responds that "he said that he was set up." (See p. 6 of transcript of conversation of March 31, 1979 attached as Exhibit K).

Subsequent to the alleged payoff, Errichetti suggests that he and MacDonald stop at a Holiday Inn in Hauppauge, N.Y. There they meet other representatives of Abdul Enterprises including Weinberg and Amoroso. During this meeting Weinberg and Amoroso apologize profusely to MacDonald for the conduct of McCloud (McCarthy). It is obvious that MacDonald is upset at what has transpired. If MacDonald were part of the alleged bribe conspiracy there would have been no reason to be so upset and no need for such apologies.

The importance of controlling Mr. Weinberg under these circumstances is evident, especially when he was acting in concert with Errichetti, a man Weinberg openly admired in his book, "The Sting Man", because of Errichetti's similar penchant for wheeling-dealing and conning third parties. The significance of the unrecorded meeting between Weinberg and Errichetti of March 30, 1979 becomes more evident on account of activities occurring on April 1, 1979. The evidence indicates that Mr. Errichetti and Mr. Weinberg had secretly agreed to make it appear as though a bribe had taken place and to split up the remaining $75,000.00 between themselves ($25,000.00 was sent back to Abdul based on a ruse relating to repairing the Sheik's yacht in hope of obtaining incriminating evidence through a fingerprint analysis). A meeting was arranged by Weinberg and Errichetti on a site off the Long Island Expressway where they could split the money. This was accomplished on April 1, 1979. Mr. DiLorenzo was interviewed by the FBI in June 1980. He advised the FBI at that time that he had driven Errichetti back to Long Island on April 1, 1979. Errichetti was carrying a briefcase similar to the one he had received on March 31, 1979 from McCloud (McCarthy). They traveled to a rest stop on the Long Island Expressway and Errichetti met with Mel Weinberg. The briefcase was given by Errichetti to Weinberg. Of course, there is no record of this meeting other than through the interviews of Mr. DiLorenzo. Mr. Weinberg never reported a meeting. Mr. DiLorenzo indicated that Weinberg had appeared at this time in a light colored Lincoln Continental. Marie Weinberg, the wife of Mel Weinberg, later confirmed that she drove her husband in a Continental to a stop off the Long Island Expressway where her husband picked up a briefcase from a person her husband identified as Errichetti. Mrs. Weinberg also indicated that her husband had told her that he had "ducked" Anthony Amoroso, who was supposed to be supervising Weinberg's activities. In fact, on April 1, 1979 FBI agent Amoroso, who was to be supervising Weinberg, was in Montreal, Canada. Weinberg denied this meeting and attacked his wife's statements. However, it is interesting that DiLorenzo identified the Continental independent of Marie Weinberg's confirmation of this meeting. Weinberg could offer no reasonable explanation how DiLorenzo knew the identity of his wife's Lincoln Continental since he claimed he normally drove a "pick-up" truck.

Mr. Weinberg denied that he had received a $15,000 bonus, lump sum payment as a reward for his work in the MacDonald matter. An Airtel of the FBI from SAC, Brooklyn-Queens, dated 5/14/79 indicates that the request for $15,000 lump sum payment by the Government to Weinberg was specifically for his conduct in creating the $100,000 bribe scenario. (See Airtel of 5/14/79, attached hereto as Exhibit L) which indicates that $15,000 payment was a reward for Weinberg's "skillfully establishing a major federal violation against a major political figure."

During the course of the grand jury investigation I asked Mr. MacDonald if he would submit to a polygraph examination. He agreed. The test was conducted by a nationally respected New York polygraphist, Richard O. Arther. Mr. MacDonald was found to be truthful as to his claim of innocence. On March 3, 1981, in a meeting with representatives of the Public Integrity Section I offered to have Mr. MacDonald submit to a polygraph examination by a recognized expert, selected by the Department of Justice. It was requested by the Government that Mr. MacDonald be subjected to an interview by representatives of the FBI and Justice Department to determine whether there were appropriate subjects for a polygraph examination. This was agreed to by Mr. MacDonald. This unusual procedure was followed due to my deep conviction that this was the type of case where Mr. MacDonald could demonstrate his innocence and good faith by speaking directly to the representatives of the Government. After the interview of Mr. MacDonald was conducted, and as a result of my specifically pursuing the matter, I was advised some three months later that proper subjects of questioning did exist but that it was decided by superiors not to pursue the polygraph examination.

On June 11, 1981 I wrote to Rudolph W. Giuliani, Associate Attorney General, asking him for an independent review of the matter by his office and continuing the offer of a polygraph examination. See my letter of June 11, 1981 attached as Exhibit M. I did meet with Department of Justice officials (not Mr. Giuliani) but never received any decision or response.

As indicated in the letter to Mr. Giuliani, I had offered to the Government information to the effect that Errichetti had used Mr. MacDonald and that Mr. MacDonald was innocent of any wrongdoing. I was told by attorneys for Mr. Errichetti that Errichetti, based on his desire to exonerate an innocent man, namely MacDonald, had agreed to provide the Government with his statement under oath that Mr. MacDonald was being used by him, never agreed to misuse his office, never received any monies and was innocent of any bribe. The Government rejected the sworn statement, requesting that Mr. Errichetti appear before the grand jury. Since this matter was pending, Mr. Errichetti declined the invitation to appear before the grand jury without immunity.

There were other indications of the lack of involvement of Mr. MacDonald in any wrongdoing. Simultaneous to the taped discussions regarding the matter which was the subject of the indictment, other discussions took place between Weinberg, Errichetti and other Abdul (Government) representatives regarding another specific deal involving a casino license applicant. It is significant that no attempt was ever made by the Government to involve Mr. MacDonald in this license application. This is hardly conduct consistent with control by MacDonald of the Casino Control Commission. It appeared that there was a reluctance on the part of the Government to truly believe that MacDonald was in fact approachable. In fact, when the Grand Jury investigation of this matter was transferred from Newark, N.J. to Brooklyn, after being investigated for over one year (without any indictment being returned), the Government explained to the Federal Grand Jury in Newark on March 5, 1981 that it had attempted to establish other wrongdoing with respect to the New Jersey casino industry, the Commission, and Mr. MacDonald, in particular, but had "come up dry". Obviously, there was no indication of any wrongdoing by Mr. MacDonald with regard to any other matters investigated by the Government.

Numerous statements by Mr. Errichetti during taped conversations with government representatives highlight not only his lack of credibility, but also the inherent improbability of the alleged scheme. During the course of a conversation on January 9, 1979, Errichetti attempts to convince McCloud (McCarthy) to hand over bribe money, and if a license is not granted, the money will be refunded. It is unbelievable that bribe monies, once paid, would be refunded. In the April 1, 1979 telephone conversation with Weinberg, Errichetti tells

Weinberg how happy MacDonald is with the $100,000 and also that he "whipped" out $25,000 of that money so that the yacht of the billionaire Shiek could be repaired. It is fanciful and unbelievable that a man seeking a bribe would be so delighted to give back twenty-five percent of the bribe to fix the yacht belonging to a man of the Shiek's reputed wealth.

It should also be noted that Errichetti was initially attempting to obtain $400,000 from Abdul, and later settled for $100,000. (See transcript of taped conversation of January 9, 1979).

All of the above indicates that the Government should have been most cautious in charging a man of Mr. MacDonald's untainted reputation with a crime built on questionable circumstantial evidence constructed by devious architects such as Weinberg and Errichetti.

We learned during the course of pretrial proceedings that we had not received certain prosecution memoranda which dealt specifically with the MacDonald matter. These memoranda which the defendants were unable to obtain from the Government, or through the Court, are listed below for the information of the Committee:

1) February 26, 1981 memorandum of James Plaisted, Asst. U.S. Attorney, regarding the factual analysis of the credibility of Mel Weinberg.

2) Memorandum of Jan. 23, 1981 prepared by Mr. Gerald McDowell, Chief of the Public Integrity Section, analyzing the MacDonald matter.

3) November 1980 memorandum of Mr. Reid Weingarten of Public Integrity regarding the MacDonald case and Mr. Weinberg in particular.

4) March 1981 memorandum of Mr. Weingarten or Mr. Eric Holder regarding the lack of credibility of Mr. Weinberg.

5) April 25, 1980 memorandum of Messrs. Weir and Plaza regarding the MacDonald case.

6) May 14, 1980 memorandum of Plaza and/or Weir regarding the problems in t! MacDonald case.

7) Memorandum of Plaza, or possibly Weir or DelTufo, dated February 27, 1981 regarding the credibility of Weinberg and containing a factual analysis of the MacDonald case.

Although such documents had been provided as a matter of course in prior cases and in the initial stages of the MacDonald case, a reverse of this policy by the Justice Department prevented counsel from ascertaining all of the facts relating to the charges against Mr. MacDonald.

Please be assured that this office will provide any further assistance requested by this Committee and shall be available to assist and cooperate with this Committee with respect to its inquiry.

Respectfully submitted,

JUSTIN P. WALDER

JPW:jw
Enc.

Exhibit A

JMM:men
8.

BQ 87-81067

JM: The Four Seasons.

AE: Uh, Holiday and the casinos in between. No. He wants brand new...and I don't blame him. Understand? I would suggest that if this way is arrived at, that would be the way to go, not only because of the approval, but because of one's ability to have a first class operation.

JM: Right. (Pause). But would you be able to do this through the Legislature? That's where your strength would be or something like that, right?

AE: My strength is political here.

JM: In this town?

AE: As well as Camden. Anything I want. Three solicitors, you know Planning Board, State Senators, uh, you name it. I got the strength. (Inaudible) and the most ultimate strength is the Casino Commission...Ken Mc Donald, the Vice Chairman...I was told.

JM: I see, the Vice Chairman's uh.

AE:
q
Of the commission. The Chairman is a full-timer at $60,000 and it should be be brought out, my nominee. Kenneth Mc Donald, Vice Chairman, businessman, multi-millionaire, Ford distributor-east coast, $18,500 part-time Commissioner, my nominee. Schvatza (phonetic-meaning black), one year term (inaudible), should be coming here this morning. He's from ten miles from the house where I live. He's black and I named a black person. He's my nominee. The other fellow from North Jersey I don't know. Italian fellow named Joe somebody, I know him, but he's not my nominee...and the fellow Murke (phonetic) who's not my nominee, the other person.

JMM:men
9.

BQ 87-81067

JM: And they're all on the commission now.

AE: Right.

JM: There's five on the commission and four out of the five...

AE: Three out of the five.

JM: Three out of the five are yours. In other words, the majority...you're the majority then.

AE: Yeah. So that's where my strength comes from. Implication or from people knowing (inaudible). Ken Mc Donald and those fellows had the opportunity with the Hearing Officer two weeks ago when they nailed him to the fucking cross. (Inaudible) Jesus Christ, they're gonna kill us. Next thing, when I met with Mc Donald, that was his office, not mine cause he has an emergency in his family. I said, Ken, you ain't gonna kill us. He said, how much? 162,000. He said done. This guy was tickled to death. He would have gave him, he would have given him a million dollars.

JM. (Laugh) Right.

AE: If they, if they didn't get past that first hurdle they wouldn't get here, where they are yesterday. So, you know, for you to sit where you are and question where I come from, I have no problem.

JM: No, I'm not questioning it, but I have to be sure when I put in so much money, really, that I'm gonna get my money's worth, that I'm not making any contributions to political campaigns or something like that. I want to make sure that I'm getting...

Exhibit B

JMM:man
28.

BQ 87-81067

AE: Before you don't get nothing. You're too fucking late under all normal circumstances. You're too fucking late. Everybody's in here already. That's why I've gotta move this as fast as I can because everyone's jumping on everyone's fucking head. That's one of the big things I've gotta do. To move you from fucking 13 to 5 or 6 or 7 or 8. After I I'm a little leary. There's only one, actually one that's in operation. The others have had their applications, have had their money up, but that don't mean bullshit. They're gonna get it, but they're gonna have to pull fucking teeth. I'll tell you. They'll be crossing every T and dotting every I. (Inaudible) Mayor (Inaudible) Pierre Hollingsworth (Phonetic), commissioned by the Governor. There are five commissioners, one of which depicts himself as the mayor, not elected by the people. So he is subservient to the other four guys. Commissioner Roth, a Jewish fellow, on the bible, he will do no wrong. The black guy, whatever I want, O.K. Commissioner Colozzi, whatever I want. Two of them are mine and then the mayor falls in line. I met each one head on head by themselves. Again, not with anything except I need your help to get through, honest to goodness, clean people to operate a decent first-class operation and I get a finder's fee. I told them that.

JM: Uh huh.

AE: No fucking problem. Like I said, anything you want. I called an attorney up, Billy Lashman (Phonetic). I went to school with him 35 years ago. Billy. Don't say any more. Any fucking thing you want. You did for this town. We owe you. We all owe you. You bring it in here. No problem. You know what, no fucking body can tell you that in this

[redacted]

MW: The main thing you oughta speak to him about is Mc Donald.

AA: Mc Donald.

MW: (IA) Mc Donald he got the O.K.

AE: What about the other guy?

MW: Well...

AE; Frank, O.K.?

MW: And Frank. Frank ties this up there's no problem.

AA; I think you gotta set it right out for him and give him real strong assurances that, hey, this guy can do this and this can do that and this guy can do that, you know, once you lay out for him and he's kind of a hard guy to deal with times because, you know, and uh you just gotta lead him which way you want.

MW: He told me that Matthews is coming up here.

AA: Oh yeah.

MW: Well, I think maybe we should cancel out Matthews because he says be careful of Matthews.

AA: All right, well why not just listen to him and then...

AE: (IA)

AA: Huh?

AE: (IA) I know what he's gonna talk about. He's gonna tell you or who he's gonna tell you that he got the O.K. for them.

AA: Yeah.

AE: Gotta set the ball rolling, he's up for election this time.

AA: Yeah.

AE: This kid.

AA: Yeah.

AE: You see, its a unique situation down there. We got one Assemblyman Democrat, which is him. The other one's a Republican. The senator is my man, who is (IA), Jewish kid hates fucking Matthews. (IA).

Exhibit D

AE; Here.

MW: Huh?

AE: Here.

MW: Huh.

AE: Here.

MW; Over here.

AE: Home, right where I live.

AA; Yeah, Jersey, it's supposed to hit. It's only going to be very light here, they say.

AE: Three to five.

MW: All right, we'll set it up that way, then, and you tell him to keep Matthews out then.

AE: (IA) Anything happens wrong, don't come looking at me. Your judgment, not mine.

AA: All right, like you say he, he appreciates your judgment. O.K.?

AE; All right.

AA; If you tell him, lay it out to him, uh.

AE: Lay it on the table, right on the table for him.

AA: I think, I think the big thing is you give him those assurances on...

AE; Mc Donald.

AA: Mc Donald, that's you know, that's his prime thing now.

AE: You got that. You got the other guy. The guy who I talked to on the phone. You were there when I talked to him. I spoke to him since then.

AA: Would, would there be any problem in him meeting Mc Donald?

AE: No, I think I can arrange to have dinner one social. But he's gotta be nice and keep his mouth shut. I got to tell him what to say, you know.

MW: Now, he's he's the (IA) man Mc Donald.

AA: Well, like you said if you can arrange to have him meet Mc

Donald and he gives him some assurances that, you know.

AE: He won't talk to him.

AA: He won't?

AE: Nobody's gonna talk to him.

AA: Well at least for him to meet him, that may satisfy him. What the hell.

AE: Well the fact of the matter is (Pause) resorts, whose got more to win or lose than he does at this stage of the game...

AA: Yeah.

AE: They, they trust me. Its just as simple as that and that's for nothing. OK, son-of-a-bitch absolutely zero. Resorts. There's a guy who should be through the hose, the cock sucker, but they ain't paying nothing. That's why he's important to Jack. I like it down there with Jack.

MW; You want a cup of coffee? Huh.

AE: No.

MW; (IA) jacket over there. Is that cashmere?

AE; Huh huh I think it's cashmere. It feels like it.

AA: It looks nice. I tell you I think when you straighten him out, O.K. and just tell him that he'll be O.K. because sometimes he uh seems all right for a while and then he gets very nervous.

MW: I tell you he's in trouble because of Iran right now.

AE: I'm gonna tell you right now. I'm gonna tell him we can buy Atlantic City, with the team we got right now. No ifs ands and buts.

MW: We'll leave you alone in here, nobody will be in OK.

AE: I told you basically the other day, I'm gonna tell him the same thing.

AA: How does Resorts stand right now? On this thing? They gonna?

AE: Oh yeah.

AA: They're gonna get it? They got....

E: (IA) temporary for six more months. Now you wait and all

Exhibit E

to 'em and whatever, OK. And discuss them nothing else except that alright, good. I'll call you later, bye.

(AE hangs up phone)

AE: Thats professional work there my boy.

MW: Yeah you did a good job C -- C - shubear (ph)

AE: I, I couldn't call New York. Dan called New York and said they won't give me, they won't give me the information as you know. He says...we don't ...what...we'd a been given the phone number. He says wait a minute. He says I'll have to call Hilton account (ph) there's something around back. He just won't, they fin...they finally got a cash register for the branch.

MW: What do you say (IA).

AE: (IA) what?

MW: (IA) There's five million.

UM: Hmm

AE: Yeah.

MW: I get screwed up with them zeroes

AE: Two zeroes are...uh...cents.

MW: Well, we better point that out to him because he's ah walking on cloud nine.

AE: Well, I said to him...wait a minute. He can't fucking believe that. When he left that night

I said to him. He says I'm gonna mention an amount. I said, wait a minute, you don't fucking mention money to him. You fuck. I'll give it to him and say go buy a cigar.

MW: Well, anyway, let me ask you a question, anyway you can arrange that he gives you the envelope and you hand the envelope to him in front of him.

AE: Oh, no way, no way. Here's a guy gonna sit in judgment and he's gonna have two fucking guys know that...me is bad enough.

MW: Well, then let you give it to him and the balance we can always glom. I'd rather have the guy get his feet wet. He sees the money's there and wants it.

AE: Mac Donald ain't doing it for money ya know, he's doing it for me.

MW: I know that.

AE: He don't give a fuck about no ten thousand dollars.

AE: No, believe it when I tell you Mac Donald, Mac Donald isn't getting a fucking quarter. No way. I may buy him a cigar, a three dollar cigar, that's it, but there ain't no fucking way I'm gonna offer, give him the money. And there's no way that fucking Mac Don...Mc Cloud is gonna say he's gonna give it to him. The deal's off. (Laugh)

MW: Well, we'll work on that. We'll hold that in abeyance, we'll work on that.

AA: Well, its a good thing we know, we knew...

MW: We know, because we didn't know which way to go because he came back, you know he's riding on cloud ninety nine.

Exhibit F

JMM:men
10.

BQ 194-32

AE: You'll give me the envelope.

JM: Uh hum.

AE: And I have to give it to him.

JM: Uh hum.

AE: So you can see it, whether its from the parking lot or whatever. Is that correct?

JM: Uh hum.

AE: Is that what you tell me?

JM: O.K.

AE: O.K., what's the number?

JM: What do you want?

AE: As much as you can give. You looking for a gangster you're gonna fucking get it.

JM: Well, you tell me.

AE: Lets give him the hundred (inaudible). Stop all the fucking bullshit. I'll come to your office. He'll be out in the car or wherever, parking lot. I'll have Joey there, naturally, because he drives. When I go downstairs, I will stand out in the fucking I mean by the car and I'll talk to him and I will hand the fucking envelope, period. That satisfactory?

JM: O.K.

AE: Be done. When you wanna do it?

JM: Tell me.

Exhibit G

AA: Oh.

AE: To talk about his future.

AA: Oh, OK, well I, I thought there was gonna be another meeting between you and Mac Donald and Jack.

AE: No, no.

MW: No, no, he's gonna handle it.

AA: Oh, OK.

AE: Mac Donald (IA).

MW: He's scarred that Jack's gonna say to Mac Donald, here's the 10,000 or somethin. You know he's gonna say somethin wrong, Mac Donald (IA).

AE: Can I tell ya somethin? He'll blow the, if that happens forget about it. (IA).

MW: So he'll meet, he'll meet with Jack next Saturday and get it straightened out and a.

AE: When does, when does that fuck leave?

MW: Who?

AE: Mc Cloud.

MW: When's he leavin? I don't know, I haven't the slightest idea.

AA: I don't know, I didn't ask him.

AE: I'd like get, set down, him and I, and straighten the fuckin thing out before we go, before next Saturday.

MW: No, no (IA) you're gonna get it straightened out with him tonight. Let's get the party over with and you sit down with him tonight. All right? And lay it out to him. Hey, one on one, ya lay it out.

AE: I did! In that fuckin room up in New York.

MW: Well do it again, lay out with him, this time.

AA: Why don't ya do this, why don't after you go to dinner, OK? Yeah, you's are gonna come, come back invite him up to your room, just the two of ya and, and discuss it. He'll come up.

MW: Lay it out to him.

AA: Lay, lay out to him, what you want, what your position is, what you want him to, you know, whatever, whatever is buggin ya, you know.

AE: Just keep his fuckin word, that's all. Cause he said to me, and I told the guy you got ten comin, nods to me, says Eric, says OK, Mayor if you give it to me.

MW: Well, I think it was misunderstanding because I didn't know that was, was that far down the line. And I thought they were gonna get back together again and that's the last I heard of it.

AE: Him and I talked after Mac Donald left I went to his room for five minutes upstairs in the Hyatt House. I says now the deal is 10,000 now! 90 when the license is approved. He said, that's a fair deal. I said, fine. See it (laughs).

MW: And he never got back.

AE: Now, when I'm, I'm sorry, also, Mac Donald had said to him, like I gold you, you know buy every fuckin thing up you can buy, don't worry about nothin, OK? He says to me, OK. Go ahead, he says to me. Go ahead and fly everything. I said well who the fuck do I talk to? (IA) I wanna make sure I don't step on anybody's fuckin toes. He says, you get a hold of Mel. OK, so that's my fuckin out, I'm talkin to you.

MW: Yeah.

Exhibit H

(IA)

AE: Yeah, sure, Tuesday, uh, Saturday.

MW: Saturday?

AE: Saturday, eleven o'clock.

MW: (IA) I wanna meet before the eighth, cause he's gotta go up to Toronto. Saturday night (IA)

TD: He's got a thing about Toronto.

MW: Uh, Saturday night, we'll meet you at the uh Hyatt House in Cherry Hill?

AE: Sure.

MW: O.K.?

AE: Saturday night.

MW: Yeah, we'll have dinner with Mac Donald...(IA)

AE: Well, I'll have to bring him all the way up to New York and then back...

MW: The only other thing, Ange, you know I was thinking. You said he was gonna sit in the car. Why don't you bring him up and put him in one of the offices when you go in with Jack. I don't think...(IA)

AE: I said to Jack. I said I was thinking about a, a strategy. I can't see him in the fucking parking lot sitting like a (IA)

TD: (IA) I agree with you.

MW: Alright.

AE: I've gotta thing of something to bring him up in the building, sit down...(IA)

MW: Let him sit in the office and...

TD: Maybe, he's got that other office. Let him sit in the other office.

MW: Yeah.

TD: Ya know, the one next to Jack's.

MW: Go in and say hello to Jack and walk. Alright? And then we'll meet you Saturday night...

AE: At the Hyatt House.

MW: Yeah, what time you wanna make it?

AE: Well, we've gotta get back from New York, ya know.

TD: We'll make it eight, nine o'clock.

AE: Eight o'clock's fine.

MW: Alright. Make arrangements for us for two rooms, alright?

AE: Sure.

TD: Yeah. Well, we'll meet you there and then what I'll do is I'll leave from there, it'll be Sunday, and then the next morning I'll go to Montreal right from there.

AE: From Philly?

TD: Yeah.

AE: You got the plane?

TD: Huh?

AE: (IA) make arrangements or what?

TD: Uh,

AE: (IA)

TD: Yeah, alright

AE: (IA)

(TV on loudly in background)

Exhibit I

AE: I have to be in a meeting at ten o'clock in his office.

MW: Right.

AE: In Trenton, so I'm trying, so I called. I called up uh, Mc Cloud.

MW: Right.

AE: Alright? And the girl says he's out of the country.

MW: He's out of the country.

AE: (Laughs) All I wanted to tell him was could he meet us three o'clock instead of eleven o'clock. Follow me?

MW: Yeah, no problem.

AE: No problem?

MW: No!

AE: Alright.

MW: No problem he's...

AE: Jesus Christ, the guy's not uh.

MW: Did you tell her who you were?

AE: I told the girl, Mayor Errichetti of Camden. I gave her the number, says he'll be back next week. I said okay I figured I'd get a hold of you real fast.

MW: What the fuck is that?

AE: I don't know. I just wanna make sure, you know, when I go...

MW: No, no.

AE: Alright, so I go back. I, I go back to my man and tell him that, uh we gotta be up there at three o'clock.

MW: Right.

AE: Alright and I'll see you tomorrow 12:15.

MW: Right, yeah, there. He must be hiding from someone, is the only thing I can think of.

AE: I've no problem with that.. I just don't wanna go up there and get jerked off.

MW: No, no, hey, Angie.

AE: What?

MW: If I tell ya to come, right?

AE: You I believe. (Laughter).

MW: Hey, if I tell ya to come, believe me, it's there. Everything's ready to go.

AE: Okay, bubby.

MW: Uh, I don't know what the hell that was about.

AE: Uh, whatever, now if he calls just in case he calls back, I'll just tell him to change it to three o'clock.

MW: Yeah, all, oh, in fact, I'll put a call through now and change it right away. Don't worry about it.

AE: Alright.

MW: Okay.

AE: I left my phone number with his office though. So if he does call, I'll just tell him, you know, I'll just tell him that I have to be in the Governor's office and um, to postpone it, until three o'clock instead of twelve, uh, eleven o'clock.

MW: Alright.

AE: Alright.

MW: Don't worry about, threee o'clock is fine, that's Saturday, three o'clock.

AE: Yes.

MW: No problem.

AE: And I'll see you tomorrow at 12:15.

MW: Right-O.

AE: Okay, dad.

MW: Take care.

AE: Take care.

MW: Bye bye.

AE: Bye.

Exhibit J

subject that Mr. Hendricks raised as to prep sessions, there is a session between Mr. Weinberg and Mr. Errechetti on March 30th, which, from what we can gather, at least to date, there was an unrecorded conversation and apparently no 302s were made, at least as far as we know.

We would like to have any documents -- well, it is crucial if they exist with respect to that particular session, because this is the day before the payoff to Mr. Errechetti.

THE COURT: You're back to '82 now, the prep sessions?

MR. BROGAN: I thought it should be raised in that context, because --

MR. HENDRICKS: All 302s involving Mr. Weinberg have been provided to counsel.

MR. BROGAN: Is there any other documentation?

THE COURT: He said no.

MR. BROGAN: Regarding that prep session? He just said with respect to the 302 --

THE COURT: He said previously there were no documents.

MR. BROGAN: I don't know if he did say that.

MR. HENDRICKS: Your Honor, there are undoubtedly prosecution memos that deal with all of the acts, and to my recollection, deal with a meeting that counsel is referring to.

They are prosecution memoranda. There are no 302s or statements by Mr. Weinberg, other than what he has testified to.

THE COURT: You're drawing a distinction that doesn't make that much difference in my mind.

MR. BROGAN: Your Honor, may I ask the Court to specifically review those particular items and maybe counsel -- maybe Mr. Hendricks can advise the Court as to what those particular documents are because it is obviously crucial to this case.

THE COURT: Could you identify them for me and supply them to me to examine, Mr. Hendricks? You don't have to do it this minute, but maybe later this afternoon or tomorrow morning?

MR. HENDRICKS: Of course, your Honor.

THE COURT: So I can look at it.

85, directive by Nathan to Puccio to investigate matter of gifts to Weinberg.

Exhibit K

	inaudible
MW	You eat your heart out
UM	Huh
MW	Straighten out now. You know the news. Okay?
	(Inaudible)
MW	Take care. Take care.
	(inaudible)
	(sound of car starting)
	(inaudible)
	(end of Part I. Conversation continues on Part II Begin Part II)
	Inaudible sounds
UM	I'll tell ya.
JJ	Well, why was he pissed off? I'm missing the point.
UM	Sh-h-h-h-h...(overriding)
JJ	You, you were talking to him.
MW	He said that he was set up.
UM	Sh-h-h-h-h (tape is turned off).

Exhibit L

[redacted]
EXHIBIT
DP 59

OPTIONAL FORM NO. 10
JULY 1973 EDITION
GSA FPMR (41 CFR) 101-11.6
UNITED STATES GOVERNMENT

Memorandum

TO : DIRECTOR, FBI DATE: 5/14/79

FROM : SAC, BROOKLYN-QUEENS [redacted]

SUBJECT: [redacted]

DEFENDANT'S
EXHIBIT
Weiss 31-
G 80-340 EVID

This is a request for a lump sum payment of $15,000 for above captioned source. [redacted]

For several months, captioned source has been in contact with ANGELO ERRICHETTI in connection with the case entitled, "ABSCAM; ITSP; (OO:BQ)." On 2/12/79, ERRICHETTI came to the offices of Abdul Enterprises, Ltd., Holbrook, New York, the undercover company of said case, to update Chairman of the Board of Abdul, JOHN M. MC CLOUD, regarding the progress being made by ERRICHETTI in Atlantic City, NJ. It should be noted, ERRICHETTI was paid $25,000 on 1/20/79 to aid Abdul Enterprises in securing a casino license in Atlantic City. Prior to the meeting with MC CLOUD, the source impressed upon ERRICHETTI that he should detail KENNETH MAC DONALD's willingness to cooperate with Abdul Enterprises in securing that license. Note that KENNETH MAC DONALD is Vice Chairman of the Casino Control Commission (CCC) of Atlantic City, NJ. It is the function of the CCC to rule as to who obtains a license to operate a casino in Atlantic City.

Because of the source's persuasiveness, ERRICHETTI, at the subsequent meeting with MC CLOUD that same day, detailed MAC DONALD's willingness to cooperate with Abdul. Additionally, ERRICHETTI stated MAC DONALD wanted $100,000 for all four commission members and admitted that he was the commission's "bag man".

On 3/2/79, the source again met with ERRICHETTI at Hauppuage, NY. At this meeting, the source elicited from ERRICHETTI the fact that he controlled MAC DONALD. ERRICHETTI told the source that the $100,000 mentioned previously would

[redacted]

BQ [redacted]

not only assure Abdul's obtaining the license, but also that once obtained it would not be lost.

During the period 2/12/79 to 3/2/79, the source had several telephone conversations wherein the source was able to arrange a face-to-face meeting between MC CLOUD and MAC DONALD on 3/5/79.

On 3/5/79, MC CLOUD, MAC DONALD and ERRICHETTI met at Hugo's Restaurant, Cherry Hill, NJ for dinner. Although the conversation was general in nature, a point made clear was the fact that casino operators must cooperate with the CCC in order to obtain a license.

Additional conversations between the source and ERRICHETTI culminated in a meeting at the Spanish River Inn, Del Ray Beach, Florida on 3/22/79. At this meeting, ERRICHETTI admitted that MAC DONALD was somewhat miffed by the fact that MC CLOUD has not yet produced the money "promised" to MAC DONALD. The source apologized for the error and guaranteed that a meeting would be scheduled immediately so that MAC DONALD could be accomodated. The next evening, MC CLOUD and ERRICHETTI met in private and arranged for the "payoff".

On 3/31/79, ERRICHETTI and MAC DONALD traveled to Holbrook, NY. Preliminary conversation followed the initial greeting culminating at approximately 3:30 PM with words by ERRICHETTI indicating the time for the passing of the money had come. Because no clear-cut distinct understanding as to the reason for the money passing had been enunciated, MC CLOUD opened the briefcase, displayed the $100,000 in cash to MAC DONALD and bluntly told him the cash was for a guarantee of Abdul securing a casino license. MAC DONALD and ERRICHETTI obviously dumbfounded at this action, made some conversation, closed the briefcase, took the money and left.

Later this same day, ERRICHETTI and MAC DONALD met with the source and told him they were grossly insulted by MC CLOUD's action. The source, by displaying compassion and understanding, was able to convince ERRICHETTI and MAC DONALD that no malice was intended by MC CLOUD, but that merely, in a clumsy way, he obtained the necessary guarantees. Additional conversation with ERRICHETTI resulted in the reestablishment of a harmonious rapport resulting in ERRICHETTI's detailing eleven political targets, including US Congressman and Senator, as well as New Jersey State Legislators.

It should be noted that during negotiations with ERRICHETTI and MAC DONALD, it was evident that MAC DONALD did not want to be present when the money was passed. It was only due to the persuasiveness of the source and his longstanding rapport with ERRICHETTI that resulted in MAC DONALD being physically present in MC CLOUD's office on 3/31/79.

To reward the source for the outstanding manner in which he not only skillfully established a major federal violation against a major political figure, but also obtained information as to additional corrupt political targets, a $15,000 lump sum is requested.

Exhibit M

June 11, 1981

Rudolph W. Giuliani, Esq.
Associate Attorney General
Main Justice Building
Room 3143
9th Street & Pennsylvania Avenue
Washington, D.C

Dear Mr. Giuliani:

This firm represents Kenneth N. MacDonald concerning an investigation being conducted by the Public Integrity Section, Criminal Division, of the United States Department of Justice. This investigation was initially commenced some time in February of 1980 by the United States Attorney's Office for the District of New Jersey by Assistant U.S. Attorney Robert A. Weir, Jr. To my knowledge, some time in October of 1980, the Public Integrity Section assumed responsibility for this investigation through Reid H. Weingarten, Esq. It is my understanding that the investigation relating to events occurring in March of 1979 were presented to a Federal Grand Jury sitting in Newark, New Jersey. In excess of one year following the commencement of this investigation, the investigation was moved to the Eastern District of New York and is now being presented to a Federal Grand Jury sitting in Brooklyn, New York.

From the outset of this investigation I have cooperated in presenting information to the individuals handling this matter, with the understanding that such would be compared with other data emanating from their investigation. In addition, I have presented data indicating that Angelo Errichetti "used" my client for his own purposes.

On March 3, 1981 I met with representatives of the Public Integrity Section to discuss various facts concerning this investigation and indicated a willingness to submit my client to a polygraph examination by a recognized expert. Following the March 3, 1981 meeting, representatives of the Public Integrity Section asked if I would be willing to permit an interview of my client, with the understanding that the information obtained during the interview would not be used by the Government in its case in chief if a prosecution should result. It was indicated that through such an interview a determination could be made as to whether there were specific and relevant questions which could be asked of my client and evaluated through a polygraph examination. After the usual defense attorney soul searching I agreed to this procedure. In any event, such a meeting occurred on March 23, 1981. Following the March 23, 1981 meeting and for a period of approximately two months, I received no further advice from Public Integrity. In May I telephoned inquiring as to the status of the matter. Reid H. Weingarten, Esq. advised that although there were specific questions that could be asked of my client, it was the judgment of Public Integrity not to proceed with a polygraph examination but rather to continue the presentation before the Federal Grand Jury in Brooklyn. Mr. MacDonald is still willing to submit to the polygraph examination. It was evident from our meetings that differences of opinion existed in Public Integrity concerning the viability of a prosecution. The facts of the case and the impeccable background and reputation of Mr. MacDonald justify these differences.

On June 5, 1981, I received the usual target letter extending an invitation to Mr. MacDonald to testify before the Brooklyn Grand Jury on June 18, 1981. As I have previously indicated, under all of the circumstances and in view of my cooperation to date, I respectfully decline this invitation in behalf of my client.

I advised and discussed with Public Integrity Section my intention to write to you for the purpose of requesting a factual review of this matter and certain policy issues relating to a prosecution. I am pleased that Public Integrity has indicated that it would have no objection to such review. It is not my intention to delay the orderly consideration of this matter by the Grand Jury and I will therefore make myself available at a convenient time for a meeting. I look forward to hearing from you in this regard.

Very truly yours,

JUSTIN P. WALDER

JPW:bw
cc: Gerald McDowell, Esq.
Reid H. Weingarten, Esq.

bcc: Mr. Kenneth N. MacDonald
John P. Sears, Esq.
Richard H. Martin, Esq.

Cert. RRR#P27 0692766

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